Nos. 21-cv-7532 (Lead); 21-cv-7585; 21-cv-7961; 21-cv-7962; 21-cv-7966; 21-cv-7969; 21-cv8034; 21-cv-8042; 21-cv-8049; 21-cv-8055; 21-cv-8139; 21-cv-8258; 21-cv-8271; 21-cv-8538; 21-cv-8557; 21-cv-8566 (Consolidated)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE PURDUE PHARMA L.P., ET AL., DEBTORS

APPEALS FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
BANKR. CASE NO. 19-23649 (RDD)

APPENDIX TO THE AD HOC GROUP OF INDIVIDUAL VICTIMS' (I) APPELLEE BRIEF AND (II) JOINDER TO THE APPELLEE BRIEFS OF THE DEBTORS' AND THE OFFICIAL COMMITTEE OF UNSECURED CREDTIORS

VOLUME II

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INDEX

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

- x

In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

United States Bankruptcy Court

300 Quarropas Street, Room 248

White Plains, NY 10601

June 3, 2020

10:03 AM

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re Amended Agenda (ECF #1219)

Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I) Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF#1178)

Objection Limited Objection of the Ad Hoc Committee on Accountability to the Debtors Motion for an Order Extending General Bar Date (related document(s)1178) (ECF #1187)

Limited Objection of the Non-Consenting States To Debtors' Motion (related document(s)1178) filed by Andrew M. Troop on behalf of Ad Hoc Group of Non- Consenting States. (Troop, Andrew) (ECF #1197)

Ad Hoc Committee's Objection to Requests to Extend the Bar Date (related document(s)1178, 1173) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (ECF #1202)

Debtors' Omnibus Reply (ECF #1214)

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Supplemental Declaration of Jeanne C. Finegan (related document(s)1178) filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #1179)

Memorandum of Law Limited Objection to Ad Hoc Committee's Limited Objection to Debtors' Motion to Extend General Bar Date (related document(s)1187) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF #1788)

Declaration of Michael S. Quinn in Support of the Ad Hoc Committee on Accountability's Limited Objection to Debtors' Motion to Extend the General Bar Date (related document(s)1187) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF #1189)

Statement / Multi-State Governmental Entities Groups Statement in Support of the Debtors' Motion for Entry of an Order Extending the General Bar Date for a Limited Period and Approving the Form of Notice Thereof (related document(s)1178) (ECF #1196)

Statement of the Ad Hoc Group of Individual Victims (I) in Support of the Debtor's Motion for Entry of an Order Extending the General Bar Date for a Limited Period and (III) Objecting to Requests for Entry of Order Extending Bar date by Ninety Days 1173 (related document(s)1178) filed by J. Christopher Shore on behalf of Ad Hoc Group of Individual Victims of Purdue Pharma L.P. (ECF #1198)

Statement of Unsecured Committee In Support of Debtors' Motion (ECF #1213)

Notice For Listen-In Only Dial-in Information (ECF #1216)

Letter Re: Request for Extension of Bar Date Filed by Harrison Cullen (ECF #1133)

Letter to Judge Drain re: Supporting Harrison Cullens request filed on 5/6/20 to extend the deadline for individual claims to September 30th. (related document(s)1133) Filed by Joanne Peterson (ECF #1141)

Letter Letter to Judge Drain re: an addition to the letter I wrote to you in October, 2019 against the proposed settlement for Pursue Pharma (related document(s)280) Filed by Stephen G. Gelfand (ECF #1142)

Letter to Judge Drain re: support to Harrison Cullens request to extend the deadline by Ninety days for filing of individual claims... (related document(s)1133) Filed by Edward J. Bisch (ECF #1145)

Letter to Judge Drain re: support Harrison Cullens request to extend the deadline to September 30, 2020 for filing of individual claims (related document(s)1133) Filed by Barbara Van Rooyan (ECF #1149)

Letter to Judge Drain re: support of the letter submitted by Harrison Cullen, filed to the docket on May 6, 2020, regarding movement of the bar date for individual victims to September 30, 2020. (related document(s)1133) Filed by Cynthia Munger (ECF #1153)

Motion to File Proof of Claim After Claims Bar Date /support Harrison Cullens request to extend the deadline by Ninety days for filing of individual claims filed by Dan Schneider (ECF #1157)

Motion to File Proof of Claim After Claims Bar Date (request that you extend the filing of personal injury claims against Purdue Pharma and the drug OxyContin) filed by Ed Vanicky. (ECF #1158)

Letter to Judge Drain re: Support Harrison Cullens request filed on 5/6/20 to extend deadline for individual claims to September 30th (related document(s)1133) Filed by Maryanne Frangules MOAR Executive Director (ECF #1160)

Motion to File Proof of Claim After Claims Bar Date filed by On behalf of the Farash Family Barbara Farash (ECF #1168)

Letter to Judge Drain re: support of Harrison Cullen's request by ninety days. The deadline of individual claims (related document(s)1133) Filed by Leona Nuss (ECF #1174)

Statement / Multi-State Governmental Entities Groups Statement in Support of the Debtors' Motion for Entry of an Order Extending the General Bar Date for a Limited Period and Approving the Form of Notice Thereof (ECF #1196)

Statement of the Ad Hoc Group of Individual Victims (I) in Support of the Debtor's Motion for Entry of an Order Extending the General Bar Date for a Limited Period and (III) Objecting to Requests for Entry of Order Extending Bar date by Ninety Days 1173 (related document(s)1178) filed by J. Christopher Shore (ECF #1198)

Limited Objection of the Debtors to Pending Requests Regarding Extension of the Bar Date (related documents 1185, 1157, 1158) (related document(s)1149, 1153, 1173, 1174, 1133, 1145, 1142, 1160, 1141) filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #1199)

Statement of the Official Committee of Unsecured Creditors in Response to Letter Briefs Requesting Extension of Bar Date (related document(s)1178) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #1200)

Statement / Memorandum in Support of the Entry of an Order Extending the Bar Date filed by Andrew M. Troop on behalf of Ad Hoc Group of Non-Consenting States (ECF #1173)

Objection / Ad Hoc Committee's Objection to Requests to Extend the Bar Date (related document(s)1178, 1173) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants (ECF #1202)

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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Drain and we're here in In re Purdue Pharma, LP, et al. This is a completely telephonic hearing; therefore, I'm going to ask you stating your name and client the first time you speak, to do so again if you come in later in the hearing and one would reasonably believe that the Court reporter might not know who you are from your voice. I may ask you to identify yourself also for that same reason later in the hearing.

There is only one authorized recording of this hearing. It's being taken by Court Solutions. Court Solutions provides that recording to our clerk's office on a daily basis. If you want a transcript of the hearing, you should contact the clerk's office to arrange for one.

So, with that introduction, I have the amended agenda for today's hearing, which really covers only one matter, which is the issue of the proposed extension of the June 30 bar date in this case. So, with that introduction, I should hear from counsel for the Debtors on their motion.

MR. HUEBNER: Sure. Good morning, Your Honor. It's Marshall Huebner of Davis, Polk, and Wardwell for the Debtors. Can I be heard clearly and well?

THE COURT: Yes. Yeah, fine, thank you.

MR. HUEBNER: Sure. Okay. Let me begin on a more personal note to the Court. The U.S. Trustee's office,

really everybody on the line, obviously, these are very difficult, painful, and trying times in many ways. I hope that people are all safe and healthy and well in their various circumstances. I also did want to thank the Court. This is, obviously, and extra hearing on top of our normal omnibus schedule. We are all very well aware of how burdened the Court is on multiple, very large matters, and so thank you for accommodating us in something that, obviously, we think is quite important.

I want to spend just about three minutes, Your Honor. We try to give very brief case updates since, obviously, there are -- sort of 97 percent of the iceberg is under the waterline and not visible and most of it, frankly, should be that way until it's time to bring it to the Court or other attention, but there are a couple of things, I think, are worth just quickly noting, none of which may be news, but still worth noting.

Last week, we filed what we call Report 1D, Your Honor, which is a very detailed and voluminous, I think 401 pages, I think, probably even without exhibits, report that is covering the period from January 1 of 2008 until, I believe, the petition date. It covers all intercompany and other corporate transactions between the Debtors on the one hand, and shareholder and other shareholder-owned entities on the other hand, and all non-cash transfers.

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As the Court surely remembers, on December 16th, only three months after the filing date, we filed an equally extraordinarily detailed and thorough Report 1A. Report 1A covered all cash distributions and dividends and the like, but obviously, there was more connectivity between Purdue on the one hand and the shareholders and shareholder-owned companies on the other hand.

Report 1B is the other half of the circle, so whether it was a dividend or something that was not cash or whether it was a contractual relationship or royalty agreement, anything, this is designed to be another massive plank in our early promise of, what I think, can probably fairly be called radical transparency. And this, I think, now covers the waterfront for all transaction for a very long period between the Debtors on the one hand and the shareholders and shareholder-owned entities on the other hand.

I should also note, because it hasn’t come up, I think, to anyone’s attention recently, but we know that some creditors hold it very sacred and we’re still waiting for proposals for -- from some of them for some more granularity, but we have also not forgotten the promise that we made several times on the record -- and as I think this Court knows, we always keep our promises -- that when this case is over, as soon as we can all get it over, for any

number of reasons, responsibly and well, and the plan and the releases contemplated go effective, with whatever final form the plan takes, there will be a repository of documents the way there has been other -- after other analogous situations, like, I believe, tobacco, for example.

We know that that is important to people and I don't want it to think -- I don't want anybody to think the we have forgotten about that commitment. The only other thing that I will quickly mention before I turn to the, essentially, single item on the agenda is mediation, and I think brevity is probably appropriate here. People are very hard at work on the mediations. The mediators, themselves, are also very hard at work.

There were many mediations days in May. There are many mediation days in June, and I think that it's proceeding. More than that, I probably should not say, but I didn't want the Court to think that despite the complexities of everybody's current situation, that the bottom 97 percent of the iceberg was not proceeding along multiple fronts. It most assuredly is.

With respect to today's hearing, Your Honor, let me now turn to the agenda. It will, on the main, be handled by my partner, Jim McClammy who, for today's purposes, we will actually just call Mr. McClammy as opposed to saying Jim. I would note that the agenda letter is slightly

complicated because there were some letters from patient advocate and similar groups that were put on the docket early on. We don't -- I don't know the origin of those or whether it's a concerted effort. Doesn't really matter.

People have a right to express views; although, we do remain concerned that groups continue to use our docket to express their views on topics, as opposed to seeking relief from the Court. Those were more in the nature of hybrid letters, and then, although the core parties knew that we were on the very brink of filing a motion, we did get a kind of statement and memorandum of law from the non-consenting states filed a few hours before our motion hit the docket.

I think Your Honor already said, as we see it, this is really a single-issue hearing. I think probably the right order of operations -- sorry, one last thing.

We did confirm with Mr. Troop that they do not intend to cross examine Ms. Finegan, because that would have made this hearing much more complicated, and I actually don't think that any of the facts in the Prime Clerk declaration are disputed by anybody, but I'll leave the technicalities of moving that into evidence to Mr. McClammy, but it was important to us because, obviously, if there was going to be a cross examination, the Court might have wanted video or some other mechanic to ensure that a witness could

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be sworn in, but we don't believe that is the case.

And so, what I think probably makes sense and they're sort of two different movants at the end of the day. I think there is our motion that seeks the 30-day extension and then there's Mr. Troop's sort of motion, statement and memorandum, that seeks a 90-day extension, and there are a whole bunch of other people who just have views on those two, I don't know, ideas, for lack of a better word. Probably, it makes sense for the Debtors to go first, which Your Honor has already said, so I think that's definitely what's happening.

It probably makes sense for Mr. Troop to go second because, I think, he's probably the chief spokesman of the other point of view, and then I think -- and the Committee actually put a very helpful chart in their pleading, showing sort of the lay of the land. Now I think at that point, maybe we turn the podium over -- and I didn't write out an order because I didn't want to be cheeky, but obviously, there are a variety of other major stakeholders who have views on zero, 30, 90, something else, and then we sort of maybe bring it home after that.

So, if that sounds sensible, I will turn the podium over to Mr. McClammy and then Mr. Troop can follow and then we'll sort of figure out a good order of operations for the people who have views on, essentially, the two

primary options before the Court. Is that --

THE COURT: Okay.

MR. HUEBNER: -- sensible, Your Honor?

THE COURT: Well, I actually believe there's only one motion before me, which is the Debtors motion. That isn't to say that -- I take seriously the other matters on the docket, including the Ad Hoc Committee of States filings, but there really only is one motion before me, and of course, this is motion for relief from an order, my prior bar date order, from February.

So, I think it is appropriate to proceed with that motion, but I also think, the order that you're suggesting, which is that your presentation be followed by the Ad Hoc Non-Consenting States Committee is fine. So, why don't we proceed on that basis?

MR. HUEBNER: Okay, terrific. So then, I will turn my microphone onto mute and ask for Mr. McClammy to take over, including whatever admission of the declaration is necessary, and thank you.

THE COURT: Okay.

MR. MCCLAMMY: Good morning, Your Honor. Jim McClammy on behalf of -- Jim McClammy of David, Polk, and Wardwell on behalf of the Debtors.

THE COURT: Morning.

MR. MCCLAMMY: Good morning. With us on the phone

today is Ms. Jeanne Finegan, our declarant from Prime Clerk. Also, on the phone from Davis Polk, we have Ms. Jacquelyn Knudson and Ester Townes, my David Polk colleagues who have been, really, unflagging in their efforts in connection with the bar date, and their efforts have been greatly appreciated.

And as Mr. Huebner mentioned, all parties, I believe, really greatly appreciate, especially in these trying times, the Court's and the parties' efforts to continue to move these cases forward.

So, with that, Your Honor, I'll turn to the fact that we have on, before the Court today, the motion to extend the bar date by 30 days. I'll note that that has been supported by the Unsecured Creditors Committee, the Multistate Governmental Entities Ad Hoc Group, and the Ad Hoc Group of Individual Victims.

I believe it was noted in the statement in support by the Unsecured Creditors Committee that the Individual Victims Ad Hoc Group may have taken the position that they were supporting the motion only with respect to personal injury victims. Our read of their papers, and after further communications with counsel for the Individual Victims Group, it is our understanding that they support the extension of extension of the bar date for all potential claimants, and not just the individual victims.

Your Honor, I'd like to make, I think, a brief statement, just to give an overview of the Debtors' positions with respect to the various statements that have been filed in support and in opposition to our motion, then, I would then propose to move into evidence the declaration of Ms. Finegan before we move on to a brief legal argument addressing each of the objections, if that's okay with Your Honor.

THE COURT: That's fine.

MR. MCCLAMMY: Thank you, Your Honor. You know, as Your Honor knows, it's the Debtors' job, really, to be good stewards of these cases, and often, as here, that means managing the requests and views of all parties in interest, in light of what is necessary to both move these cases forward without undue delay and without increasing the administrative burden on the bankruptcy, on these estates. And it was really, with that in mind, that the Debtors reviewed and really took into consideration the many conflicting views that they've received in light of the submissions that were made with respect to the ongoing COVID-19 pandemic.

Some of the key constituencies, as mentioned, including the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants have made it clear that they do not believe that any extension of the bar date is

necessary, whether it be 30 days or 90 days. However, the Ad Hoc Committee did agree that, should an extension be granted, it should be for 30 days. Others, particularly those individual creditors and groups, including the Ad Hoc Group of Non-Consenting States have filed requests for extensions on the docket and believe that the bar date should be extended for a prolonged period of at least 90 days.

And still others, like the Official Committee of Unsecured Creditors, the Ad Hoc Group of Individual Victims, and the Multi-State Governmental Entities Group, have supported the Debtors' request for a limited 30-day, one-time extension for all potential claimants, even though some of them may have not preferred to have any extension of the general bar date at all.

For their part, the Debtors believe supplemental notice plan is running successfully and effectively, and it's providing notice to the Debtors' potential claimants and also provides a workable way for them to file their proofs of claim. In fact, with the increased time spent in front of TVs and online as a result of COVID-19, some of the elements of the plan, really, have already over delivered.

And I say that, all to make clear that the Debtors did not determine that 30 days was the right amount of time to extend the general bar date in light of COVID-19, in a

vacuum. The Debtors have spent considerable time reconciling those varying views in light of the success of the notice program and evaluating that and the needs of these cases, before determining if 30 days was the right number.

In landing on that 30-day timeframe, the Debtors considered a number of key factors. First, there is no credible argument that the Debtors, with the noticing agent, have not been providing adequate notice to potential claimants through what this Court knows is an unprecedented, robust, and multifaceted supplemental notice plan.

Second, the notice program and the claims filing process was developed with mechanisms in place that, as it turns out, are workable, even during the pandemic and the shutdown. There's a toll-free number and online information available. There's the fact that the claimants are allowed to request and file proofs of claim forms by mail.

We required only a baseline of necessary information, and we simplified the forms in a way that took into account these considerations, after having discussed them with all of the creditor constituencies that ended up supporting the bar date when it was first presented to the Court, including with respect to the ability to provide information with the filing of your claims and documentations with the filing of your claims, but not

making that a necessary component of filing those claims.

Third, is generalized and potentially -- the generalized and potentially speculative assertions of difficulty in filing claims cannot, in and of themselves, justify the substantial cost to these estates and the resulting reduction and potential recovery to the Debtors' claimants, that a delay due to a prolonged extension of the bar date would cause.

In addition to the fact, that there will be the direct cost of about $700,000 to conduct the notice program for the extension, there will also be substantial secondary costs, including from keeping the bankruptcy estate in place longer than otherwise might be, the cost of which has been in the millions, indeed perhaps tens of millions of dollars per month in these cases in recent times.

Fourth, to the extent that potential claimants do have legitimate individualized claims of difficulties warranting a deviation from the bar date, the Bankruptcy Code and the bankruptcy rules provide mechanisms for those claimants to seek appropriate relief from the Court.

And fifth, with the proposed 30-day extension, the bar date in this case will have run for 178 days, a time period that is much longer than the bar date periods in other mass tort bankruptcy cases.

With that general overview, Your Honor, I would

like to move now for the submission into evidence of the declaration of Ms. Jeanne C. Finegan. As I mentioned, Ms. Finegan is on the phone and she is a vice president of notice and media solutions at Prime Clerk, LLC. She submitted a declaration in connection with the original bar date motion and submitted a supplemental declaration in support of the motion for an extension that was submitted on Ma 20th of this year, and it's found at Docket No. 1179.

We have reached out to counsel for the objectors, and my understanding is that counsel for the Non-Consenting States and also counsel for the Ad Hoc Committee for Accountability have no objection to the submission of her declaration into evidence. And with that, Your Honor, I would move for the submission of that declaration into evidence.

THE COURT: Okay. Does anyone want to question Ms. Finegan on her supplemental declaration?

MR. TROOP: Your Honor, Andrew Troop from Pillsbury for the Non-Consenting States. No, we don't plan on questioning Ms. Finegan.

THE COURT: Okay, thank you. All right. Ms. Finegan is on the line, I see, in looking at the hearing dashboard. Let me ask you, ma'am, I have your supplemental declaration here. It's dated May 20th, which is fairly recently, but knowing that this would be your direct

testimony in this matter, is there anything in it that you wish to change? You may have -- you might be on mute. I'm not sure. Your -- yeah, there you go. Is there anything --

MS. FINEGAN: Apology --

THE COURT: -- you would wish to change, Ms. Finegan?

MS. FINEGAN: Apologies, Your Honor. No, the declaration stands.

THE COURT: Okay. Very well, thank you. I may have questions related to it, but I have a feeling that Mr. McClammy will be able to answer them. If not, I'll come back to you for an answer, if I don't get one from him. But having said that and having reviewed the declaration, I will admit it into evidence as Ms. Finegan's direct testimony. And, of course, I also have her declaration from January 30th of this year, in support of the original bar date motion, which was ultimately granted in somewhat modified form in early February as well as her testimony at the hearing on the bar date motion, which I've also re-reviewed.

So, that doesn't need to be admitted again. it's already part of the record, but the supplemental declaration is now admitted. So, you can go ahead, Mr. McClammy, with the rest of your presentation.

MR. MCCLAMMY: Thank you, Your Honor. Turning first, with respect to the Ad Hoc Group of Individual

Victims, one of the things that we discussed with them in connection with their submitting a statement in support of the extension of the bar date, with making sure that's -- we made clear for the record that, although we believe that cause exists here to extend the bar date for a limited 30 days, these Debtors do agree with some of the points that are made in the statement of support submitted by the Ad Hoc Group of Individual Victims, in particular, that potential claimants, including individuals, should not delay filing a claim simply because there is an extension.

Extending the bar date here is not intended as an open invitation from -- for potential claimants to delay such a filing. Rather, we see this extension, which is being requested under unprecedented circumstances, as being meant as an accommodation to those who may be having or experiencing difficulties in light of COVID-19 in completing the claims filing process. Notice of the bar date extension will be provided as set forth in the supplemental declaration of Ms. Finegan so that the claimants are aware of the extended bar date, and that a failure to submit a claim by that extended date will mean that such a claim could be subject to being barred or being disallowed.

However, as noted by the Ad Hoc Group of Individual Victims, there is, in fact, a possibility that even with all the notice that has been provided and with the

extension of the bar date, that there may be claimants that seek to file claims under Bankruptcy Rule 9006 on the basis of excusable neglect. If Debtors will endeavor to give appropriate consideration to late filing claimants who affirm that they did not receive actual notice and/or who believe that their particular circumstances justify their failure to comply with the bar date, including hardships occasioned by COVID-19.

We believe that that provides some important context to keep in mind when considering the objections that seek 90 days or longer extensions to the bar date. With that, I will turn now to the --

THE COURT: Well, can I -- let me jump in here, and I think I should, just to make my view clear, and I think it's consistent with the law. A bar date is a very important event in a Chapter 11 case, including these cases. As the courts say, it's not just a mere procedural gauntlet. It really is a key deadline for asserting one's claims in the case.

The Second Circuit, in fact, in its own words, has taken a hard line in applying a bar date deadline and said that if compliance with the bar date is within the control of the party who missed it, it's a very rare case where the bar date deadline would be extended. So, I think it is important to note that it is an important deadline that

needs to be complied with. If someone is, heaven forbid, in the hospital or for some other reason unable not because of their neglect or a legitimate -- for a legitimate excuse, not to file a claim by the bar date, then on motion by them, Courts extend it.

But the Courts look at those requests carefully and, as I said, generally unless there's a good reason why the deadline could not be complied with, the request for an extension is normally denied, and that might particularly be the case when there has been a lengthy period, such as provided for here. So, while it is clear that there may be exceptions, and the Supreme Court has recognized that in the Pioneer case and Bankruptcy Rules recognize it in Rule 9006, those exceptions are limited.

So, people should definitely not wait until the last minute under the assumption that, well, if they miss it by a day or two, it'll be okay. They should file their claim promptly, before the last minute, to assure themselves that it can actually be recognized as a claim in the case.

MR. MCCLAMMY: Thank you, Your Honor. Very much appreciated and completely agree with the Court's statement on -- in that regard, and we think that that will be very helpful to the process going forward, to have the claims in as soon as they can be filed.

THE COURT: Let me say one other thing. There are

a great deal of potential -- a great number of potential claimants here who are not entitled to individual notice, i.e., a letter to them that would say, you have until X date to file your proof of claim.

That is because the Debtors' product here was in very wide circulation and the parties, and ultimately, the Court concluded that individualized notice to anyone who was prescribed OxyContin or some other product by the Debtors that would give rise, potentially, to a claim, would not be required on an individual basis, but rather through the extensive notice program that the Debtors proposed, that with some changes, I approved.

So, you should not expect, as a claimant, to be getting, necessarily, an individual notice or letter. If you see an advertisement on TV or online or a billboard, that applies to you, and you need to, therefore, abide by the deadline. The deadline will be running regardless whether you got individualized notice, i.e., a letter to you specifically or not.

There may be exceptions for some people who, if they can show that the Debtor actually knew you, particularly, would have a claim or would be reasonably knowable to the Debtor, but it's not a good idea to rely on those exceptions, because, again, the Courts narrowly construe bar date or requests for relief from the bar date.

So, when you see an advertisement or a billboard or a notice on YouTube or in a blog, follow up and file the claim by the deadline.

MR. MCCLAMMY: Thank you, Your Honor. With that, I'd like to move to the Non-Consenting States objection to a 30-day extension. The Non-Consenting States, I see, it really failed to demonstrate why anything more than a one-time, 30-day extension of the general bar date would be reasonable here, or satisfy the cause standard. And although the Non-Consenting States correctly note that the Debtors' supplemental notice plan was developed prior to COVID-19, it seems to me that they failed to appreciate the that the supplemental notice plan is not static in nature and, in fact, has been adjusted and optimized in response to COVID-19.

For example, if you're looking at the supplemental Finegan declaration, Paragraph 15, it notes that in response to COVID-19, Prime Clerk adjusted TV commercials to air during day parts and on networks where research has shown that 35 increase -- a 35 percent increase in viewership, in general, increased national TV spots, and streaming video ads in response to movie theater closures, and the fact that we mailed a two-page full color summary flier of the bar date notice to 178 mobile health teams for distribution to replace the planned boots-on-the-ground approach.

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Moreover, as previously discussed, the Debtors' claims filing process includes mechanisms that safeguard against potential impacts of COVID-19 and impact it could have had on the process. As I mentioned, the proof of claim forms can be received and filed by mail. The filing of a proof of claim form does not require access to medical records. Indeed, this was a specifically negotiated and much discussed point, including with the Non-Consenting States Group in advance of the filing of the original bar date motion, that supporting documentation is not an absolute requirement.

It may be needed at some time and even demanded at some time later, but is not a requirement before claimants file their proof of claim. And, indeed, claimants do not need specific personnel or even an attorney to file a claim. We believe the claim forms are straightforward, and also, it was noted in our claims form process, that the failure to answer a question, in and of itself, will not necessarily result in the denial of a claim.

It's also important to note that in arguing that the Debtors can extend the general bar date by 90 days with, in their view, "only" an additional $1.4 million above the Debtors' estimate of $700,000 for the direct costs of the extended notice program, that the Non-Consenting States overlook the soft and the hard costs that would certain run

into the tens of millions of dollars if these cases are delayed, and for those reasons, Your Honor, we believe that the Non-Consenting States Group's objections should be overruled.

With respect to the Ad Hoc Committee of Accountability --

THE COURT: Could -- I'm sorry, can I interrupt you on this? And I know I'll be hearing from Mr. Troop in due course, but I had some questions for you on the 90-day alternative.

At least one of the pleadings in support of the Debtors' motion, albeit in somewhat reluctant support, states that the Debtors are seeking or planning on filing a Chapter 11 plan this fall, which could be as early as the end of September or later in the fall, but that's the Debtors' goal and that it is argued -- argues for not having a bar date extension to the end of September.

I didn't see anything to that effect, although, maybe I just missed it, in the Debtors' own pleadings. Do the Debtors have -- and this is not something written in stone, but did the Debtors have a goal as to when they would be filing a plan in this case?

MR. MCCLAMMY: Your Honor --

MR. HUEBNER: Your Honor, with Mr. McClammy's consent, I'll jump in. We are reluctant, frankly, in an

open forum and in our pleadings to set forth exactly what our multi-tracks or plans and thoughts and calendars are. It is a complicated case. The mediation is a complicated thing that is proceeding alongside the bankruptcy process, as are other major initiatives. Our goal is to get this company out of Chapter 11 as soon as humanly possible and to turn off all the professionals and send everybody home and give the money out to the stakeholders and to the people who need it.

We want to file a plan at the earliest possible opportunity. Several things clearly have to happen before that is possible. If we filed a plan tomorrow with the mediation midstream, other things unresolved, we think in this case that would be very counterproductive. There are some cases in which Debtors file plans that have the support of no one, just to get balls rolling.

From where we sit right now, on June 3rd, this is not that case at this time. Do we hope that a plan is absolutely viable sometime in the next few months? Absolutely. Which month of fall, is there a dream of something a little earlier, is there a fear of something a little later? Sure. But as each thing gets pushed out, take the probability that this entire case and the tens of millions of dollars of risk and business evaporation loss and known cost, it makes it much more of a certainty that

those will be incurred and the money will not go where we need it.

So, I apologize for not saying something as simple as, oh, Your Honor, first time ever, you missed something. Page 7, Footnote 6, we said we're to file a plan between August 15th and September 30th. There is no such footnote, because we don't think it's appropriate to lay something like that out just yet. But, given that we're now in the beginning of June and we have a bunch of rows left to hoe, there is certainly a hope, and more than a hope, that we could be doing something in that general landing zone.

I would prefer not to be more specific than that, unless the Court requires it.

THE COURT: Okay, that's fine. And then I had one other question. I'm aware, although I don't think there's a reported decision on this, of one other fairly recent case where a bar date was extended, or at least there was an additional major effort to get claims in, in a mass tort context, and that was the PG&E case. That was prompted by a perception that simply no one or very few people were filing claims and that there might be something wrong with the notice program that was associated with the bar date for those tort -- potential tort claimants.

I did not see in the pleadings, except in one letter which was filed fairly early in May, any contention

that the anticipated number of claims being filed is actually much lower -- I'm sorry, the number of claims actually filed by individuals is much lower than was anticipated.

Now, I appreciate, we're only at June 3, and probably the data on the claims dates back to last week, which is still more than a month before the end of the current bar date period, but is there a perception on the Debtors' part, maybe either Mr. McClammy or Ms. Finegan can answer this, that the claims that were anticipated actually greatly exceed the numbers that are being filed to date?

MR. MCCLAMMY: Your Honor, Jim McClammy. In response to that, there isn't anything that we've seen to suggest that there is a -- that there was an issue with the noticing, nothing that's bearing itself out in the number of claims being filed, the number of hits to the website, and the number of page views to the website as set forth in Ms. Finegan's declaration. So, there isn't anything along those lines.

It's really occasioned by trying to find the right balance in light of the perception of difficulties that people may be having as a result of COVID-19 and how that may be impacting the schedules and finding the right balance, cost-wise, between saying no extension and, perhaps, having to deal with a larger number of people

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filing motions, to file late claims, or extending the bar date for a short period of time to further strengthen the, what we think is a successful program.

THE COURT: Okay. All right.

MR. MCCLAMMY: With that, Your Honor, perhaps before ceding the podium, I'd like to just finish up by addressing briefly the Ad Hoc Committee on Accountability and their assertions.

THE COURT: Sure.

MR. MCCLAMMY: So, as the Court noted, letters are not going out to individual claimants, everyone that has been prescribed a Purdue opioid or Purdue product, and that was made after considering the substantial cost, time, and effort that would be involved in undertaking such an endeavor. And indeed, the claims discussed by the accountability group are really no different than any of the other opioid-based claims in these cases, all of which, really, in one form or another, assert that some Purdue marketing effort or other created an environment in which more opioids were prescribed.

The argument that they're making, in many ways, proves too much, and if you were to follow the logic of the AHCA, the Ad Hoc Committee on Accountability, the Debtors would need to seek out and obtain personal contact information for all such potential claimants from third

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parties and provide direct notice to all members of the public that had received a prescription for a Purdue opioid.

We believe that, based on the already substantial cost of the noticing in these case, the alternative direct noticing efforts would have undoubtedly depleted the substantial portion of the value of the Debtors' estates and that doing so would have also increased the amount of time it would've taken to have the notice program run its course.

In developing the notice strategy, the Debtors considered how best to reach this multitude of potential claimants, which we do not believe all of them are, in fact, known claimants, nor do we believe that all of them, necessarily, have potential claims, and we quickly realized that attempting such a scorched earth search to obtain the name and address information, some of which may no longer be accurate, of these individuals, was simply not feasible for a number of reasons, including that some of this information is protected by HIPAA and that the requests for records that would need to be sought and negotiated through means such as protective orders and subpoenas, and the potential litigation over all of that, would've come at a great expense and delay.

And such efforts to provide actual written notice would have been impractical and costly and, as I mentioned, cause undue delay to these Chapter 11 cases. So, based on

the above, it became clear that such persons are, in fact, the very definition of unknown claimants because their identities were not known or reasonably ascertainable by the Debtors, and that information with respect to such claimants were not within the possession of the Debtors or in their books and records.

Indeed, after acknowledging that the actual written notice was only -- not only not legally required for these unknown claimants, but also entirely impractical. The Debtors and Prime Clerk, after consulting with key constituencies in these cases, including the Creditors Committee and other ad hoc groups, developed a supplemental noticing plan that, as the Court has noted, is really far reaching and is designed to reach 95 percent of the U.S. adult population within average times of -- fixed times and frequency and over 80 percent of the Canadian adult population on an average of three times and is, in fact, on track to exceed those targets.

We also believe that the cases relied upon by the Committee on Accountability actually support the Debtors' decision to provide notice to potential claimant who are not in the Debtors' books and records through that supplemental notice plan. Those case, particularly, In RE: Motors Liquidation case and the In RE: TK Holdings case really stand for the general proposition that fashioning adequate

notice will depend on the circumstances of the particular case and, in some cases, perhaps more than examination of a Debtor's books and records may be required in order to satisfy the reasonable ascertainable standard.

But in neither of those case is there any suggestion that that was something that would need to be undertaken here. In fact, if you look at something like In RE: Motors Liquidation Corp. at 2015 Bankruptcy Lexus 44, 45, you see the Court there noted that efforts beyond just looking at the books and records are generally not required.

And if you look at the TK Holdings case, the Debtors there sought information from a third party and its subsidiary, and eventually the California Department of Motor Vehicles, but that was for contact information contained in the registration records for certain potential claimants in those cases, so it was very particularized and not something that, I think, can be applied here where we would be looking at the logic of what they're asking to be simply to extend notice to really every single recipient of a prescription of a Purdue opioid, which, as this Court has determined, is unworkable under the circumstances.

So, for those reasons, Your Honor, the Debtors, being aware of the impact of the ongoing COVID-19 pandemic, and taking into consideration the various views of the creditor constituencies, we would request that the Court

enter an order extending the bar date for a limited, one-time extension of 30 days. Unless Your Honor has any questions, I will cede the podium to Mr. Troop and reserve the right to respond on rebuttal.

THE COURT: Okay.

MR. TROOP: Thank you, Your Honor. It's Andrew Troop from Pillsbury for the Non-Consenting States. Can I proceed?

THE COURT: Yes, good morning.

MR. TROOP: Good morning, Your Honor. Hopefully, everyone can hear me. I join in Mr. Huebner's thoughts for everyone in light of the disruption to our lives and people's lives as a result of COVID-19. The world is a very different place than when you entered the bar date order on February 3rd.

Your Honor, I want to be as focused as I can here, so bear with me if I take long pauses as I'm reading over my notes from what's been said so far today. First, Your Honor, I do want to note that I think that everyone, reluctantly or not, who's spoken in connection with or filed pleadings in connection with the extension of the bar date has acknowledged the unprecedented circumstances in which we find ourselves and that those unprecedented circumstances have, notwithstanding the breadth and scope of the notice, supplemental notice program enacted by the Debtors, guided

everyone to acknowledge that accommodations need to be reached.

And in that regard, Your Honor, let me say clearly, that the Debtors decision to file the motion where the standard before you in deciding whether to extend the bar date is for cause and not for excusable neglect, was not lost, at least, on me. If the standard were excusable neglect after the bar date, as you note, your ability to react to provide relief is extremely circumscribed by Second Circuit and, frankly, Supreme Court precedent, and the issue that you would need to be, as I read the cases, focused on is, really, the issue -- are many of the issues that have been discussed, the scope and breadth of notice.

But we find ourselves in a situation where the scope and breadth of notice is only part of the analysis that I think the Court needs to undertake in determining when and for how long to extend the bar date for cause, because it's not the scope of notice here that's at issue. It is how current circumstances have impacted or may impact the ability, willingness, focus of parties to respond.

Your Honor, there's been some suggestion in some of the pleadings as to why the Non-Consenting States have taken up this torch, and while the pleadings acknowledge that states have been impacted, as well, by COVID-19, they've been impacted in terms of their budgets, their own

internal restructuring, the fact that the health care workers at the state who are significantly involved in this case are also the ones with primary responsibility for responding to COVID-19.

The impact of COVID-19 on Non-Consenting States has been disproportionally high. According to the Washington Post yesterday, 104,755 people have died from COVID-19. Nearly 80,000 of those people, more than 75 percent, are in Non-Consenting States. The impact, here, is far and wide, and Your Honor, it's frankly farther and wider because of events over the last week.

Who would've thought we would've woken up this morning to New York Times headlines that combat troops are stationed outside of Washington, D.C., that National Guardsmen are in many major cities, that Secretaries of State's Offices were closed yesterday across the country?

These facts require an additional yard, Your Honor. They require that no one -- no one. I can't say no one, Your Honor. They require that the likelihood that someone will have to come before you and ask for permission to file a late filed claim, based on the excusable neglect standard, is minimized to the greatest extent possible. And, Your Honor, we've already taken this into account in connection with other matters in this case.

Your Honor, you may recall at a hearing before you

on May 1st, believe it was Mr. Hurley discussing certain discovery disputes before you, and one of those involved an individual named Mr. Ives who is a Sackler-related party where Mr. Hurley reported that Mr. Ives was unable to respond to discovery requests because of what's been happening with COVID-19.

And in response to that, with respect to discovery requests that have been outstanding since early March, the Court gave parties until September 1st to respond to discovery, a significant increase over the -- much more than parties in interest wanted in terms of responding to document requests that are critical to the ability to -- for this case to proceed. I'll come back to that in just a second, Your Honor.

So in sum, Your Honor, we're here because the circumstances are different. The standard before you is not excusable neglect and the world is a very different place without -- and without making any overly political statement with regard to it, it's in a worse place than it was on February 3rd. The major -- so it seems, Your Honor, that we're not arguing about an extension amongst most of the parties, the Ad Hoc Committee notwithstanding.

We're really talking about how long, and that the arguments provided in response to -- I'm sorry, one other issue, Your Honor. You asked a question about whether --

how proofs of claim were coming in against estimates. We don't know what the estimates were that the Debtors had or that Prime Clerk worked for them, and admittedly, Your Honor, this is anecdotal, but someone in this case said to me, Troop, if we extend the bar date, that could be thousands and thousands of more claims filed.

And I thought to myself at the time, doesn't that just prove the point? Doesn't that just prove the point? And, Your Honor, even if you apply the --

THE COURT: Well, except it's not proof. It's not proof. It's --

MR. TROOP: I --

THE COURT: -- hearsay, so --

MR. TROOP: Your Honor, and I didn't -- I was very clear about that.

THE COURT: Yeah, I know, but maybe people --

MR. TROOP: I think --

THE COURT: -- who are not lawyers are not, so I want to make it clear that that's not in any way evidence of anything.

MR. TROOP: But, Your Honor, we live in a world where you can't gather evidence about the impact. You can't go out and interview people. You can't go door to door and do a survey.

THE COURT: Well, but you can --

MR. TROOP: You have --

THE COURT: You can't -- but you can look, as Ms. Finegan did, at visits to the claims website and you can look at the claims that have been filed to date and see whether they are, as one would anticipate, or whether they're dramatically lower. That's just --

MR. TROOP: And --

THE COURT: That is evidence.

MR. TROOP: And, Your Honor, I don't think there's evidence on that, either.

THE COURT: Well, I asked the question. I was told no, they're not dramatically lower, by the --

MR. TROOP: By the Debtors' lawyer.

THE COURT: Well, I --

MR. TROOP: Right? He's not aware of it --

THE COURT: Ms. Finegan, you heard my question of Mr. McClammy. Do you disagree with his answer? I think you're going to have to unmute yourself again, Ms. Finegan. So, Ms. Finegan, do you disagree with Mr. McClammy's answer, which was, it does not appear to the Debtors that the claims that have been filed to date are materially lower than would be anticipated as of today's date or as of last week?

MS. FINEGAN: Your Honor, I agree with Mr. McClammy.

THE COURT: Okay. Now, I appreciate --

MR. TROOP: Then, Your Honor --

THE COURT: -- let me --

MR. TROOP: -- I --

THE COURT: I don't want to leave it at that, Mr. Troop, because I also appreciate, of course, that we're talking about June 3 and probably looking at claims from last Friday, the end of May, and the bar date, as currently set, is June 30 and there's always a large number of claims that are filed shortly before the bar date. Not -- you know, people, human nature being what it is, people wait until the last minutes.

So, I'm not sure how conclusive that evidence is, but at least it's evidence, and I would be approaching this very differently if this were a PG&E situation where people are scratching their heads why there aren't as many claims being filed as one would think.

MR. TROOP: And, Your Honor, I therefore, again, commend everyone for bringing this to you sooner rather than later, recognizing, as I do agree with you, that the numbers here will be much clearer on June 28th than they are today. By June 28th, I think, everyone would agree, it would be a very different effort in time to extend the bar date.

Your Honor, I may have a question, now, for Ms. Finegan in light of your question, but I want to think about it just a minute, of I may, and come back to it.

THE COURT: Okay.

MR. TROOP: Your Honor, the other, I would say, the other most significant argument against a longer extension, which is, I think, what you were getting at in terms of asking when plan might be filed, is this fall -- whether it would be this fall, is whether extending the bar date for 90 days would, in fact, delay the case. And, Your Honor, I think not. I mean, Mr. Huebner accurately described the efforts of the parties engaged in mediation to address the primary issue that was set forth for mediation, which is allocation and, like Mr. Huebner, I am hesitant to share with you details by -- other than to confirm everyone is working very hard.

The public side creditors are making substantial progress. There were 25-ish, I think, maybe 20-ish days of mediation set out for people in June, and while, again, this is a changed circumstance, when the mediation was authorized by the Court -- and the point of that, Your Honor, is the mediation is moving along but taking longer than people anticipated. Think everyone -- I think the Court had hoped that mediation would be concluded now, on this primary issue, and you've urged us all to move expeditiously, but I note that had that schedule, which maybe I expressed some skepticism about, but had that schedule held, the bar date would've come in after the mediation concluded.

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So, the -- now tying, as some do, the need to get proofs of claim in with the mediation, is a red herring, Your Honor. It's a red herring. And in terms of moving the case forward, Your Honor, it's similarly a red herring. There are, as alluded to, many issues that need to be resolved or people need to try to resolve before filing or abandoning a consensual plan is decided.

It's -- I've alluded already, Your Honor, to the Sackler discovery and its timing. Your Honor, I understood you to order that Sackler discovery be concluded by September 1st. That's much more than 30 days from now, and it will take months, I think, at least, but months to analyze all those documents, confirm the Sackler's roles and finances, and be able to evaluate and make reasoned decisions on the plan with releases that Mr. Huebner confirmed the Debtors intend to pursue.

Similarly, Your Honor, one of the parties that is not compulsory -- is not compelled to engage in the mediation is the United States and the Department of Justice. And the claims that the United States will assert, may assert, it's demanded treatment in this case, and, Your Honor, there's no secret, I think, here. I think last month the Debtors' special counsel, Skadden, charged the estate $2 million or so in their last interim fee application.

And their job is exclusively to deal with DOJ and

DOJ issues. Those are all issues that are going to need to be hammered down, nailed down, and resolved before a plan can get presented to you for confirmation. And those are things beyond my control, Your Honor, but they are things that are going to have to be considered. So, nothing in this case, in light of these issues, will be adversely affected by a 90-day extension as opposed to a 30-day extension.

In contrast, aside from enhancing, if not, in actuality, the perception of the fairness of the process, in light of changed circumstances, is clear. And the costs of not doing so are less predictable than the costs of doing so. No one can predict, Your Honor, whether now, 30 days from now, or 90 days from now. Readily admit that, that late claims will get filed in this case.

But I think as you noted, Your Honor, the longer the time, the more effort that's made to permit claims to be filed, probably -- and I admit I have no evidence on this, Your Honor, but we've all done this for a long time, minimizes the likelihood that more claim -- more late-filed claims will be filed than with a sooner bar date. And I think, frankly, Your Honor, it will make it easier for everyone to address it the issues by the third -- the Second Circuit when it comes to dealing with late filed claims.

So in sum, Your Honor, I think that the issues

here are simply not whether, but how long to extend the bar date, whether the intended benefits of extending the bar date would be better achieved with a longer extension than a shorter extension, in light of the fact that it's not the scope of notice that people are fighting about, but people's ability to respond, and whether, in fact, there will be demonstrable delay in this case as a result, which there will not be, Your Honor.

In fact, I don't think anyone thinks that having proofs of claims on file are necessary for the mediation process to continue because, as I noted, it was never contemplated they would be on file as a prerequisite to that.

Your Honor, I'm going to skip my question to Ms. Finegan.

THE COURT: Okay.

MR. TROOP: Okay? Any questions for me, Your Honor?

THE COURT: No. No, thanks.

MR. HUEBNER: So, Your Honor, it's Marshall Huebner. In terms of the, sort of, continued order of operations, I think it probably makes sense -- again, there's no magic to this, but I think that while, sort of, Mr. Troop's theory of the longer bar date is right before us, I -- the one other party that I believe has counsel, I

believe it's called the Ad Hoc Committee of Accountability which is a new group. I think it's actually five individuals who have retained counsel, and if counsel is on the line, we certainly would cede the podium to them to make whatever remarks they believe appropriate.

THE COURT: Okay.

MR. RACHMUTH: Thank you. May I, Your Honor?

THE COURT: Yes, go ahead.

MR. RACHMUTH: -- Paul Rachmuth on -- this is Paul Rachmuth on behalf of the Ad Hoc Committee on Accountability from Eisenberg and Baum. Our focus in this case is much narrower than the other committees that have spoken before you, and it is, as the title of our group suggests, it is to increase the accountability of the Debtor in the process.

The objection that we filed is premised on earlier this year, there was a company, Practice Fusion, which is an electronic medical records company, entered into a deferred prosecution agreement with Vermont Attorney General's Office.

THE COURT: January 27th, right?

MR. RACHMUTH: Yes, Your Honor. This company pled guilty to receiving illegal kickback from a drug manufacturer, which many have identified at Purdue Pharma, and I don't believe there can be any doubt that the party named is Purdue Pharma. Several of the exhibits used even

have Purdue Pharma's name on them. The illegality was the creation of a scheme to target patients in -- by creating a medical billing system that influenced doctors to prescribe extended-release opioids.

Accordingly, the victims of this scheme that was perpetrated by the Debtor here were those patients that were targeted. And they're the victims, whether or not they received OxyContin or another Purdue Pharma drug or a third party's drug. So the issue we have is that unless they are -- receive notice that they are a claimant in this case, specifically informing them that they were injured by Purdue Pharma because of this illegal scheme, even if they were to receive a hand-delivered note -- notice of the bar date, they would not know to file a claim.

So, there is a database with the names of these parties in it that's at Practice Fusion's custody and control which can be accessed, which has all the relevant information. It is a known set of names and the Debtor, if it so chooses or, if necessary, by 2004 from a third party, including us, could get those specific names of the parties that were targeted by the Debtor and are victims of this scheme.

We're asking for two things. One, that the Debtor provide these parties notice, and a simple notice that Purdue Pharma has filed bankruptcy and if you've been

injured by Purdue Pharma you have a claim, that notice isn't sufficient because unless someone is told that Purdue Pharma was behind this scheme, that even if they received a third-party's opioids, they're still a victim of this scheme and therefore are a potential creditor, unless that information if provided, then a notice is insufficient.

And because of the time that we're -- to get the names from Practice Fusion and construct this very narrow focused, directed notice campaign, the 90 days would be needed, not the 30 days. And I believe that this benefits the entire estate, not just this one narrow group of creditors, because as both the Debtor and Mr. Troop have pointed out, the hurdles for a party to overcome filing a late-filed claim are high.

However, if that party can show they never knew that they had a claim before the bar date, I expect Your Honor would grant their claim. In other words, there is a whole class of creditors here, who would have an excusable neglect to have late-filed claims. So whether it is 90, 120, or 180 days down the line, if a creditor from this Practice Fusion scheme does file a claim, that could interrupt the case.

However, as Mr. Troop pointed out, this case is not nearly ready for a consensual plan and the size of the numerator in this case, the number of creditors, is not

really the issue that's going to hold things up. Delaying 90 days to get proper notice to this group of creditors would not injure the process at all. I realized the enormity of the issue that's going on in this case. I understand this is a very small issue in comparison to all of the major issues that Your Honor is dealing with.

I'm asking that this one issue, for this group of creditors, be addressed appropriately. Thank you.

THE COURT: Okay.

MR. HUEBNER: So at this point, Your Honor, again, let me ask, is there anyone else -- there were some other letter filings with respect to the request for a longer extension. We're not, obviously, taking a view. We didn't try to preclude any from speaking or being heard. We're not asserting any sort of party interest defense, anything like that.

So is there anyone else from the people who are listed in the agenda letter supporting a 90-day extension who would like to be heard before I can sort of swing back to the other stakeholders in the case?

MR. TROOP: Your Honor, this is Andrew Troop again from Pillsbury for the non-consenting states. Your Honor, I do believe that there was one person who had tried to dial in but was unable to do so. I'm just sharing that I haven't heard from anyone else that intend to -- their intent to

participate or present today.

THE COURT: Okay. Well, I mean, I'm not sure why they weren't -- aren't able to do so or whether they contacted the Court. But if no one has anything further to say in opposition to the motion or, perhaps better put, seeking a longer extension, then I'm happy to hear from other parties maybe beginning with the creditors' committee.

MR. PREIS: Good morning, Your Honor. Can you hear me?

THE COURT: Yes.

MR. PREIS: Good morning. This is Arik Preis from Akin Gump Strauss Hauer & Feld on behalf of the Official Committee of Unsecured Creditors. Thank you, Your Honor, for allowing us to speak this morning on what is really an important issue in these cases.

We filed a statement yesterday setting forth our position; that's at Docket #1213.

THE COURT: Right. I've reviewed that.

MR. PREIS: Okay. We included a chart there that set forth the positions of various parties that filed pleadings. In setting forth those positions, we tried to explain the fact that different positions have been taken by different parties in this case that are, frankly, similarly situated. In some cases, we actually have the exact same time of claimant taking a diametrically opposed position on

an issue that would appear to affect them in the same way.

So I want to be actually a little specific because our chart, although we tried to hit all the parties that had filed pleadings, some of the parties that filed the pleadings actually have multiple groups within their parties or within their ad hoc group. And I think it's probably instructive for me to just go through all the different types of claimants in this case and give you a sense of where they are. And we feel we're a little bit better situated than anyone in the case right now to tell you this, given who sits on our creditors' committee and our interactions with a lot of the parties in the case.

So on the state side, you have the ad hoc group of consenting group, 23 of them, arguing for no extension, and the ad hoc group of non-consenting states, I believe there are 25 of them along with some territories and District of D.C., arguing for a 90-day extension. On the county and municipality side, and this is part of the reason I want to go through this, the PEC and the MDL, which purports to represent I believe 2,000 or so cities, counties and municipalities, they're a member of the consenting group and, therefore, they support no extension. Then you have the multi-state group, which is comprised of 1500 municipalities representing 60 million people, arguing for a 30-day extension.

On the personal injury side, you have letter requests arguing for a 90-day extension, as you know, and newly formed ad hoc group of accountability, which you just heard from, arguing for a 90-day extension for an entirely different reason. And then an ad hoc group of personal injury victims, which has been vocal in this case and purports to speak for 40,000 individual victims, supporting only a 30-day extension.

Then there are a few groups that didn't file anything -- the ad hoc group of ANS, the ad hoc group of hospitals and the third-party payors, all of whom are important players in these cases, did not file pleadings. Each of them has a representative claimant or two that sits on the creditors' committee; specifically, the creditors' committee has a hospital on its committee, West Boca Medical Center, one mother of an NAS child, one grandfather of an NAS child, a third-party payor, Blue Cross & Blue Shield Association, all of whom are on the UCC. And I've been told that although they didn't file a paper, the NAS ad hoc group is of the view that if an extension is granted, it would support a 30-day extension.

In addition, there are the Native American tribes. Although they too did not file their own specific pleading, some of them are members of the ad hoc group of consenting parties, which group supported no extension, and some are ex

officio members of the UCC.

And so, Your Honor, with this amount of difference of opinions, not on type of claimant lines and not on private versus public claimant lines, as you've heard discussed on other issues, and, frankly, not on political lines, it seems that one really needs to consider what the various arguments here because one can't simply say X creditor is saying Y because of how this affects them like in a normal way case.

So some groups, the first issue that remains most of the groups focus on is that we need to recognize that opioid victims have been hit hard by the COVID-19 pandemic for various reasons and, as such, need an extension of bar date. The ad hoc group of PIs appears in their pleadings to provide some compelling rationales for how PI victims have been particularly harmed by COVID-19. Others have argued that state and local governments or hospitals or third-party payors have been focused on COVID-19, which indeed we would want them to be and hope that they are. And as such, we're not focused on filling out a group claim form.

But although it's hard to argue that these types of positions don't appear to have merit, the consenting group may have been right when they said there's actually no hard evidence that any group or individual was, in fact, adversely affected by COVID-19 in a way that prevented them

from receiving notice of the bar date or filling out a proof of claim form. I think you even said earlier there's no evidence. All we can say about this issue, at best, is that it's simply impossible to know for certain which side is right on this issue.

Second, some have seemed to hint that the noticing program is not going to hit its noticing targets as a result of COVID-19 process and, as such, an extension is warranted. But there's no evidence of that either. Jeanne Finegan's argument -- Miss Finegan presented uncontroverted evidence about the way the program worked and who it was targeted and how it has been effective. Some claimants seem to imply that the noticing program hasn't worked or can't worked because COVID-19 will result in people being unable to fill out proof of claim forms. But the truth is, the program is a noticing program, it's not a file a proof of claim program, and forms can be filled in online and almost no documentation is necessary. Indeed, the forms were intended to be as simple as possible to fill out with different types of forms for individuals making their forms even easier to fill out.

I would note though on this point, Your Honor, that earlier, you asked the Debtors or Prime Clerk whether they have reason to believe that the number of claimants that have filed claims is less than the amount anticipated,

and Miss Finegan and Mr. McClammy answered that no, it's not. And I noted earlier -- I'm king of guessing here - that Mr. Troop thought for a second about whether he was going to cross-examine Miss Finegan and maybe he was going to ask her about this issue.

But I too thought about it because I've never in all of our discussions with the Debtors ever been told what the Debtors or Prime Clerk expected as of this time or any time as far as the number of claims to be filed. Indeed, that would require some pretty difficult assumptions about number of claimants, likely amount of claimants who file claims in mass torts of this unprecedented size and other factors.

But I can assure you, Your Honor, that some groups have absolutely told their Debtors their view on this. For example, the NAS ad hoc group has voiced to the Debtors their view that the number of claimants that have filed NAS claims is less than the amount they would have anticipated as of now and has worked with the Debtors in an effort to modify some of the noticing strategies as it relates to NAS. For example, they've worked to modify images that are used online since they're more applicable to the NAS children.

At this point, I think the NAS ad hoc group at best would say that the jury is still out on this issue. I can't speak for any other group, but I did want to note that

in response to something you raised earlier.

Third, some would argue that we shouldn't have any extension because that will in some way impact mediation. And I found myself agreeing with what Mr. Troop just said and, indeed, it was in our papers. That argument doesn't ring true at all. We began discussing mediation in late February and began formal mediation in early March. The bar date on March 1st was 120 days away. At that time, no one objected to mediation or even voiced a view that we should hold off on mediation because we don't know how many claims will be in by the bar date and that we can't reach resolution until we know the number of claims. Meaningful negotiations were intended to occur starting then, have occurred and will occur prior to the bar date deadline whenever it will be.

Moreover, and as Mr. Troop also alluded to, but I'm going to need to fix something he said in a second, we are in the midst of investigating the claims against the Sacklers. You are very aware from various discovery disputes brought to your attention last month, and indeed yesterday, we submitted another long letter to you of various discovery issues that have arisen based on what you ordered 32 days ago.

Discovery is likely months away from concluding, much less having the UCC and the non-consenting states and

perhaps others from agreeing to the settlement framework. Therefore, while we obviously hope and would want the consensual resolution by early fall, as was indicated earlier, if not sooner, a lot has to be done before that.

And, Your Honor, I just want to correct something that Mr. Troop earlier mentioned when talking about the impact that COVID-19 had on getting access to Mr. Ives' documents. We had offered to meet and confer to reduce the number of documents offline with Mr. Ives' counsel and that the deadline should be based on the number of documents returned. Mr. Ives is still taking the position that his documents would be due September 1st, and we are asking to require them by separate letter, and obviously not for this call for this hearing, to finish by August 1st. But at no point has anybody ever agreed to a deadline of discovery of September 1st for anything. As you know, there is a deadline of July 1st for certain production to be done, but again, that's not for this call.

Finally, in any argument that the bar date extension should be only for one or a specific type of claimant are just -- we don't believe are consistent with fundamental fairness, and I think Mr. McClammy addressed that earlier on in his comments.

Given all these competing positions, Your Honor, and the arguments we've heard, our initial view, as we

explained in our papers, was there should be a surgical approach for extensions; specifically, if someone or some institution or some governmental party, indeed, did have a hardship due to COVID-19 and could not file a claim on time, then they should file a late claim and submit an affidavit to that effect, and there would be the need for the Debtor to give everyone notice that this process was in effect.

But as we explained in our papers, requiring people to go through this verification process and then have a claims administrator adjudicate, or that the reasons were indeed legitimate and ensuring that this process was run in a fair and cost effective manner would have been impracticable, difficult to negotiate, time consuming to administer, and may in fact be unfair to those who we were actually trying to help, so we decided to abandon that proposal.

Therefore, we looked at all the competing interests, which I went through with you earlier, and the rationale espoused, and we considered the fact and circumstances not just of this case, but of the world we live in and, frankly, notions of fundamental fairness.

And honestly, Your Honor, I think it's fair to say that once one determines that an extension of some sort is appropriate, determining the length of that extension, whether it's 15 or 30 or 45 or 60 or 90 days, is frankly

simply a matter of what feels right based on what everyone is arguing and what people are saying as reasons for extending or not.

The UCC is a fiduciary, therefore supports a 30-day extension, not because it necessarily is a legally right answer, because frankly we're not sure there is a legally right answer, but because it strikes the appropriate balance among all the various positions advanced by all of the different parties in the case. And perhaps in that way, it's the legally right answer. Thank you, Your Honor.

THE COURT: Okay, thank you.

MR. ECKSTEIN: Your Honor, good morning. This is Kenneth Eckstein of Kramer Levin on behalf of the Ad Hoc Committee of Consenting States and Local Governments. Would it be appropriate for me to speak at this point?

MR. ECKSTEIN: Sure, go ahead.

MR. ECKSTEIN: Thank you, Your Honor. I trust Your Honor has had an opportunity to read the pleading that we submitted. I believe that we are standing alone in some respects in taking the position that there is no cause or basis in this case for an extension of the bar date. But let me just briefly summarize some of the points that we've made and address some of the comments that have been made this morning.

First, Your Honor, I want to echo the comments

that have been made by I believe all the speakers in noting that the members of the ad hoc committee of consenting states and local governments, and that includes all the states and all of the cities, counties and municipalities that sit on the ad hoc committee are keenly focused on the demands and challenges presented by the COVID-19 crisis.

And I'm sure Your Honor can appreciate that the members of the ad hoc committee, while focusing intensely on a great deal of constructive activity that has been taking place in this case over the last 90 days, has been working almost full time as well on confronting the challenges in their respective states and municipalities, and I don't believe that there is any party in this case that is more aware of the challenges presented by COVID-19 than the ad hoc committee of consenting states and local governments.

Notwithstanding this crisis and that the crisis clearly is unprecedented, I think as Your Honor has heard repeatedly from I think again all of the parties, we're balancing the challenges of the crisis with a very, very unusual, I would say unique Chapter 11 case, which is at this point I think heading into it's tenth month, with tremendous cost and expense for all the constituencies and where the significant resources that we had hoped were going to be put into the system have not yet found their way to start providing relief for the opioid crisis and its

victims, and we think those are the balances that have to be considered here.

At the end of the day, Your Honor, we have to determine whether or not there's cause for an extension of the bar date. I believe there is uniform recognition that the bar date that was established and approved by this Court in this case is a model of a broad and comprehensive bar date, it was undertaken at massive expense to the estate; over $23 million was expended in providing broad and extensive notice of the bar date in this case in a manner that I certainly have not encountered in any other case in which I've been involved.

The length of the bar date, even for a mass tort case, is extremely long, and there has been no suggestion in the papers or this hearing that there are parties who cannot file the claim. Every case, whether it's a bar date or a pleading or a deadline, everybody wants more time and we all recognize that and it's always more comfortable and it's easier to have more time. We also, I think, appreciate that whenever there is a delay or an extension of time, it causes delay to the case; that is almost axiomatic and that will be true here as well.

We do need to balance. And what I think Your Honor has before you is the fact that there is a robust and effective bar date that was put in place, that there is no

specific compelling need for more time, that in fact the evidence demonstrates that the claims are coming in, and the fact of the matter is we are devoting day in and day out. The parties in this case are devoting almost their entire day in certain cases to mediation.

It is true, mediation was started before we knew what the exact amount of the claims were going to be, but we all recognized that by June 30th, we were going to have the claims on file. And we appreciated that, while we hoped mediation would have been done earlier, the fact of the matter is in a case of this complexity, it's no surprise that it's ongoing and it's going to continue to be ongoing for a while. But as Your Honor has heard from Mr. Troop and from others, progress has been made, and I believe progress will be continued to be made. And we all must, in this case, aspire to the filing of a plan as early as possible, and I don't think anybody would quarrel with the fact that we should be aspiring to file a plan by the fall of 2020.

I appreciate full well, there are many, many hurdles that could interfere with that goal. So it would seem obvious to me, Your Honor, and hopefully to the Court, that creating additional hurdles to show this case down is exactly what nobody in this case needs. Unfortunately, we do have a limited amount of resources, and we're working mightily to figure out what the most effective way is to

make those resources available to numerous competing parties.

If one party is going to say we are not yet prepared to weigh in on what is the appropriate treatment for our constituency in this case because we don't know the universe of our claims, that could be a significant impediment to making the critical necessary progress to resolving the mediation and getting to the point where we can file a plan.

The ad hoc committee is completely sympathetic with all of the problems that we're all confronting. And this position should not be heard as anything other than a desire to balance the sympathy for the challenges that we're all dealing with, with the responsibility that we all have to keep this case moving forward as constructively and effectively as possible, and each of the parties who have spoken, I believe, are doing that. But by opening up a key deadline, as Your Honor has pointed out, the bar date is not merely an incidental or technical deadline; it is a key dating item to be able to really make the progress we need to in this case.

In the absence of cause because it's -- maybe it feels better to give more time, that's not cause in this case, Your Honor, so we would submit that the right answer is notwithstanding the fact that it may feel good, we think

the Court should conclude that it has put a robust comprehensive extensive bar date in place where all parties have received notice.

To the extent there are attorneys who want to file claims, they've had months and months to do so, and there are very, very simple mechanisms to make sure that the basic requirement of filing a claim is satisfied; there is no cause for another 30, 60 or 90 days to do so. To the contrary, we should be doing everything in our power to keep this case moving and to not create additional impediments to delay, all of which is costing this estate millions and millions of dollars a month that will continue to be incurred unless we commit ourselves collectively to actually achieving a resolution that should be in hand.

So, Your Honor, we believe that there is no cause for extending the bar date. We believe that the notice period in this case is adequate. We believe that the Court does have the ability, if there are specific exceptions that surface in the future, to deal with the excusable neglect standard by applying it to the unique circumstances that we face right now in this country. And if the facts warrant, I have no doubt that Your Honor will find an opportunity to accommodate genuine needs for additional time, and we believe that the right conclusion in this case is for the Court's order establishing a June 30 bar date to be

maintained.

At the conclusion of our pleading, Your Honor, we did say if the Court nonetheless believes that it is prepared to open up this bar date, which is a very significant event for the Court to do in a case of this size; if the Court is going to nonetheless open up the bar date, we believe that the appropriate step would be, in that case, to provide not more than 30 days, make it available to all parties, and that would be the fallback ruling that we would recommend in the event the Court believes that there actually is some need to extend. We appreciate Your Honor's consideration. Thank you.

THE COURT: Okay, thanks.

MR. MACLAY: Your Honor, this is Kevin Maclay for the MSG. May I be heard?

THE COURT: Briefly, yes.

MR. MACLAY: Thank you, Your Honor, and I will be brief because I don't want to retread any already applied ground.

THE COURT: Right, and that's the only reason I suggested it. I think we're probably getting to the point of diminishing returns on other arguments since I think we've now covered the gamut of the responses.

MR. MACLAY: Thank you, Your Honor, yes, very briefly. As was noted by counsel for the UCC, my group

represents approximately 60 million people, localities across the country who are on the front lines of both the opioid and now the Covid crisis. We carefully considered the Debtors' positions and the evidence presented in support of those positions, and we concluded that the Debtors' judgment was correct; that the appropriate balance between the hardships that have been laid out by some of the letter writers and then, ultimately, the non-consenting state group, and the delay to the case that, in our view, will also inevitably result. If a further extension were granted, that the 30-day period was the correct period. Thank you, Your Honor.

THE COURT: Okay, thank you. Anyone else? And I have read all the pleadings on this, so you can be assured of that.

MR. McCLAMMY: Your Honor, it's Jim McClammy for the Debtors.

THE COURT: Well, before you speak, Mr. McClammy, I had a question for you or maybe Ms. Finegan. The Debtors budgeted over $23 million for the bar date notice process, and as her supplemental declaration states, it's now more than two-thirds done. My question is, is there some point of diminishing returns by way of an extension given that a fair amount of this money has already been spent and you're not contemplating a lot more; it's just a reference to an

extension. I just don't know.

In terms of noticing, is there some point by which the extension goes out far enough so that the message that you've already spent, you know, more than two-thirds of the work on has been diluted? I hope that's clear; if not, you could ask me where it isn't clear.

MR. McCLAMMY: Yes. In the first instance, that may be a question for Ms. Finegan. I'll see if Ms. Finegan's able to respond.

MS. FINEGAN: Your Honor, in response to your question, while we are two-thirds of the way through the program's timeline, a majority of the budget has already been spent and contractually committed. We are currently in a maintenance level just to keep awareness. So at a very minimum, the program is running online, social media ads and display ads on YouTube. We have yet to publish one magazine title; again, that's coming out on June 12th, which is "Parents Latina." And then the program is, for the most part, concluded.

THE COURT: Okay. But I guess my question is, a tremendous amount of work and money has gone in to telling people that June 30th is the deadline. Is there any logic to the notion that if you get more than a month or so beyond that deadline with a new deadline, that the work already done is vitiated, you know, so that people kind of lose

their memory of that ad they saw or that website banner that they saw, you know, if you go much beyond the time that the Debtors have said, or does it really not matter?

MS. FINEGAN: If I understand your question correctly, Your Honor, I believe that it is always helpful for individuals to have a continuous reminder of a message in front of them. Of course, it's always up to that individual whether or not that they take action. We are only 50 percent of the equation, so I believe that it is helpful to have messages continuously in front of individuals as reminders.

THE COURT: Okay. And isn't it -- there were estimates given that the extra 30 days that the Debtors were requesting would cost in hard dollars about $700,000, and that 90 days would cost $2.1 million. Is there a weekly cost to this; is it that simple that it's X hundred thousand per week?

MS. FINEGAN: Typically, the media contracts are negotiated on a monthly basis. Certainly, we could work that out for you. I don't have that easily at my disposal, but I'm happy to calculate that for Your Honor.

THE COURT: But generally, you would negotiate a month worth of --

MS. FINEGAN: Yes, that's correct.

THE COURT: I mean, Mr. Preis said -- you know,

Mr. Preis threw out numbers like 30 days, 45 days, 60 days, 90 days; all but one of those was on a monthly basis. And I guess that you're saying that generally speaking, if you're going to have maintenance, it would be on a monthly basis.

MS. FINEGAN: That's generally the case. However, there have been notice programs that have extended into 45 days, so it can be accomplished most certainly.

THE COURT: All right. But you don't have a sense of what the cost of that would be.

MS. FINEGAN: To run the program for 45 days?

THE COURT: Yeah.

MS. FINEGAN: I do not have that easily at my fingertips, but I'm happy to gather it for you.

THE COURT: Okay. All right, thanks. All right, so Mr. McClammy, I interrupted you, but go ahead briefly.

MR. McCLAMMY: Thank you, Your Honor. Briefly, Your Honor, I just want to respond to the points raised with respect to the deferred prosecution agreement by the ad hoc committee on accountability. I believe Mr. Huebner might have a couple of additional words as a general rebuttal, if that's all right.

THE COURT: Okay.

MR. McCLAMMY: So, Your Honor, with respect to the arguments raised by the ad hoc committee on accountability concerning the deferred prosecution agreement, I just

reiterate the remarks made in my opening; that those patients are really not differently situated from the other potential claimants in this case whose contact information the Debtors do not have access to. And, you know, the fact that they may have had a contract with a party that was subject to the deferred prosecution agreement does not change that.

You know, in fact, you know, it's been very public, the accusations against Purdue, including claims of conspiracy. So in addition to the fact that the deferred prosecution agreement was in January, you know, it is not as though those that believe that they have claims tied to opioid use would have no basis for considering whether or not they had a claim against Purdue based upon information that was publicly available to them at the time.

So for those reasons and for the reasons included in our papers, Your Honor, we suggest that the request that there be a limited noticing tied to parties that may have been impacted by the matters that are outlined in the deferred prosecution agreement, that that should be overruled. And with that, I will turn it over to Mr. Huebner.

THE COURT: Okay.

MR. HUEBNER: Your Honor, let me be very brief. I hope not to take more than five minutes, but this is very

important, and I think there is actually a lot on the line.

Number one, I do want to acknowledge, we're all talking about competing goods and we're all talking about balance. It's not -- this is not a binary issue. The issue is there is a material cost of delay, there is risk of delay, and there is a probability of delay. And ultimately, in part, this comes down to judgment, but the judgment has to be looked at in context, and the context is that this original bar date was, you know, on a combined basis probably the longest, deepest, most expensive, most elaborate bar date in U.S. history.

We sort of joke about it, but, you know, that is actually what Jim McClammy got sort of, you know, canonized as St. Jim because we spent weeks and weeks and weeks taking incredible amounts of input from every single group about how to improve, extend and deepen the program and do things, frankly, that in many cases, have never been done before.

And, you know, the numbers that we're talking about, if you even sort of close your eyes and go back even just a few years, to say that 95 percent of the more than 300 million people in our country will hear about the bar date more than six times is something that 10-15 years ago, nobody could have even fantasized could be something that's going to be put into a declaration. Now it used to be you would mail it to creditors' last known address and you would

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take out four newspaper ads and that would be it. This is as far from that as anything could be.

And at the end of the day, as Your Honor has noted several times, this is about evidence. It's applying the facts to the law and notions of fairness. The evidence at this hearing, just like the evidence at the original hearing, is all and exclusively the Debtors. There is a very detailed declaration about the extraordinary number of touchpoints that the bar date has already had, about the extraordinary length of the bar date, and as far as we can tell from sophisticated computer website hits and things that those of us over 50 barely understand, an extraordinary effectiveness in getting the message out. And no one has actually said anything to the contrary, except I guess from Mr. Troop saying that some unknown person quipped to him that he or she believes that we may see more claims if the bar date is extended, which obviously isn't really hearsay, it's just an aside.

And so, you know, I think at the end of the day, the Debtors listened hard as they did the first time, and the committee listened hard; I should say committees because there are about seven of them. But in this case, I mean the official committee of unsecured creditors, which is the fiduciary for all unsecured creditors, for all claimants in this case who seek to file a claim and assert one against

the Debtors.

And so, you have the twin fiduciaries who listened and listened and listened and listened to arguments for only my group, only my group and one other group, only on a showing of cause, none at all, zero days, 15 days, 30 days, 45 days, 60 days, a couple of people saying 90 days. And we made a judgment to move for relief from our own motion that was granted on unanimous unopposed consent because we thought an extra time period was needed. Nobody has said, and there are no red herrings here, that for every day the bar date is extended, the case will be extended, and it will cost X dollars.

We obviously understand and I think I was very clear at the outset, as was Mr. McClammy, that there are many other things going on in this case, very many people are hard at work on parallel tracks, and we're massively parallel processing. But any time one of the mega-things gets pushed out, the case almost surely gets pushed out, which is why we said that a further extension, we believe, is highly likely to take tens of millions of dollars in damage to the business and risk and cost and delay out of the hands of the people that we're desperately trying to get the money to as soon as we possibly can.

And so, I think at the end of the day, you know, the layout of the parties is also not irrelevant, you know,

and Mr. Preis went into that in some detail. And it's a matter of counting heads and it's not a matter of saying, you know, the two Chapter 11 fiduciaries are completely in accord on the approach because obviously the states are sovereign and their fiduciaries.

And, unfortunately, it's been the case at so many hearings in this case, the dissenting states are on one side and a great number of other ad hoc committees and individuals and the Debtors and the UCC are on the other, and that's their right and they are obviously the caring fiduciaries for the citizens of their states. But we also have many people who separately speak for and legally represent or purport to or allege to the individuals in the state or the subdivisions within those states or the hospitals within those states or the (indiscernible) within those states.

And so, at the end of the day, you know, there's no magic right answer, but it is a question of balancing competing goods. And the Debtors, joined by I think the overall majority of organized parties in the case, very strongly stick with the balance that they struck after listening for weeks to all the parties and all their various thoughts in the rather extraordinary step of seeking relief from their own motion to extend what, as I said at the outset, was I think already the touchiest, in terms of

touching Americans in enormous numbers enormous number of times, longest deepest and probably most expensive bar date that any of us has ever seen, and we ask that the relief in the form for which we have moved be granted.

THE COURT: Okay. All right, appreciate everyone's input on this. I have before me a motion by the Debtors to extend the general bar date in this case from June 30th to July 30th of this year, a 30-day extension. It was made in response to, first, a number of letters filed starting in early May by individuals, as well as organizations, that have a role in fighting the opioid crisis in this country for an extension of the bar date in light of COVID-19.

But it's also clear to me that the effect of COVID-19 was being considered at the same time by the key parties-in-interest in this case, including the Debtors independently, the official unsecured creditors' committee and various ad hoc committees, and that led to the Debtors' motion.

It has elicited a remarkable range of responses. I think, if one were counting heads, the general majority of parties-in-interest in the case have agreed to the concept of a 30-day extension, with the exception of the two groups of states and, in terms of the consenting ad hoc committee, other governmental entities which interestingly have taken

diametrically opposite positions. One group, the non-consenting states group has sought a 90-day extension; whereas, the so-called consenting ad hoc group has argued that there should be no extension.

Frankly, I do not doubt the good faith and well-meaning nature of any of these responses. I think people on this issue, as they have with other issues in this case, have taken their positions in good faith and sincerely, not with an ultimate strategic end that would harm the ultimate claimants here, which are the parties that would be affected by the bar date.

This is a highly unusual case. There is no funded debt. All of the claimants here effectively are unsecured creditors and all but a minute portion are claimants because of either tort or other theories connected to opioids. And if one were to draw them diagrams, one could conclude, given the presence of all but a couple of states who have already settled prepetition their claims, that every citizen of every state in the United States is a claimant in one way or another, at least in terms of being represented by their state Attorneys' General or state governments, and in addition, multiple governmental entities below the state level.

Nevertheless, it is critical here, as in every case, to have finality as to the universe of claims so that

the parties can be confident that a Chapter 11 plan that distributes the Debtors' value to claimants is doing so without risk of other claimants coming out of the woodwork and asserting claims separate and apart from the plan.

In light of that fact and the unique circumstances of this case, i.e. the very broad number of claimants or potential claimants, the Debtors proposed, and the Court approved in early February of this year, an extraordinary bar date in terms of the number of days to assert a claim, as well as an extraordinary notice program, which has a high cost to it, over $23 million.

But all of the constituents active in these cases believed then, and I think still believe now, that that cost was warranted given the number of potential claimants, their desire to see the types of claims asserted. And the fact that under the Supreme Court and Second Circuit case law on notice, much of that notice -- most of that notice would need to be not individualized because the Debtors do not have readily ascertainable data to provide individual notices.

And, in fact, one could argue that if that were the case, you'd provide individual notices to every person in the United States, but rather would need to provide, in addition to the notice on people on their schedules and who one would say are readily ascertainable claimants or

potential claimants, one would need to provide extensive public notice far beyond the normal notice in Chapter 11 cases through, generally speaking, limited print media.

The notice here is indeed extraordinary, as was detailed on Page 8 of Ms. Finegan's declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, and -- and I think this is perhaps going to be more of a trend but it's a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That was combined with a simplified proof of claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail.

Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times.

In addition, the bar date program provided

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sufficient flexibility so that with the Covid pandemic, the Debtors were able to switch out of certain types of noticing, most specifically in movie theaters, into other types of noticing, and to move their funds also to types of media that, apparently in light of Covid, have gained substantial viewership.

The Court recognizes, however, that there are two steps in a proof of claim filing process: there is the notice process, and then there's the process in filing a proof of claim. Here, the Debtors' program made filing a proof of claim easy, more easy than in most cases. It is a myth, for example, that one needs detailed medical information to file a claim in these cases. There is also no bar to filing a proof of claim in this case if you cannot prove that you or your loved one was prescribed OxyContin or some other opioid from Purdue; that would not be a perjured proof of claim or a false proof of claim if you have a good faith belief in such a claim.

It might ultimately turn out that the claim would be disallowed because there might not be a legal basis for the claim, but the notion that you must be prescribed and show the prescription for one of the Debtors' opioid products in order to file a claim is simply not true.

On the other hand, the Debtors have recognized that there is cause to believe that because of the COVID-19

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pandemic and the requirement that individuals maintain social distancing and, generally speaking, do not engage with others unless in a necessary setting, that filing a proof of claim might be somewhat more difficult and require an extension of the bar date.

Many of the initial letters mentioned the fact that the deadline for filing tax returns was extended 90 days from April, from mid-April to mid-July, for example. The Debtors have proposed an extension to the end of July for the bar date here, which would be in effect a six-month notice period which, as the Debtors point out, is extraordinary long in the context of any Chapter 11 case, even one like this.

Based on the evidence before me, it is only the perception that COVID-19 has upended peoples' lives that would require any extension here, as opposed to what no one has argued but what has been considered in other cases, some problem in the notice program or some new discovery of another claim group or something like that. Frankly, the only basis for the requested extension is simply a perception. There is no real evidence that the filing of claims in these cases has, in fact, been materially affected by the COVID-19 crisis.

That leads to what is the right extension. And, frankly, given the variation or variables in the parties'

views on this, I think counsel for the committee, Mr. Preis -- or Mr. Preis, excuse me -- is right and also candid in saying one doesn't have a necessarily correct legally right answer here, but merely needs to do what one things makes sense in light of all of the circumstances.

The Debtors basically give three reasons for an extension not being more than 30 days. First and importantly, there is a cost to a longer extension. Even a 30-day extension would have, as estimated, a $700,000 hard cost; whereas, it is estimated that a 90-day extension would have a $2.1 million hard cost.

Secondly, there are undoubted, I believe, and greater than $2.1 million so-called soft costs in having a lengthy beyond-30-day extension of the bar date. Bankruptcy cases often work on deadlines. The bar date is a critical deadline in a bankruptcy case. Even though other matters are continuing in this case on an active basis, including plan mediation and discovery related to analysis of a plan that would contain within it potential releases for third parties, the delay of a bar date inevitably has some adverse effect on getting this case over with promptly.

And arguing for a longer date, frankly, I think the argument comes down to there's no real harm in having a longer date, and a longer date would leave no question as to whether there's a legitimate excuse for not filing a proof

of claim by, at this point, July 30th if the Debtors' motion were granted, as opposed to two months later, September 30th.

As far as the cost benefit analysis, it has been argued that that longer period would provide some more fairness to people and present litigation over extensions of the bar date under Rule 9006 and the Supreme Court's Pioneer case, litigation over which might actually add cost to the estate. On the other hand, it is my experience that if someone can show a good reason for an extension -- and in this case, it would be I think if they actually had COVID-19, were hospitalized and basically for the period at issue unable to function reasonably -- the bar date would be voluntarily extended and the Court would agree with that. But I agree with the committee's analysis that a more complicated set of rules for extensions would be unworkable.

In light of all of the arguments that were made and my analysis here, I conclude that the bar date should be extended the 30 days that the Debtors have requested, that the committee has agreed with, and that most of the parties that have taken a position here have agreed with.

Again, it is highly unusual to extend a bar date. I don't believe the extension is warranted based on any deficiencies in the notice program, and I believe that an extension of two weeks beyond the date for the extension on

filing taxes is weighing all the factors here appropriate, so I will grant the Debtors motion in that regard.

I want to say one thing further about timing. We're in the ninth month of this case. In some ways, this motion is a microcosm of the case as a whole. It has elicited strong views from multiple parties, views that, again, I believe are taken in good faith and not to foster any specifically parochial agenda. Nevertheless, the parties were not able to reach agreement on something as simple as an extension of the bar date.

I began by saying how unusual this case is. What I did not state then and what I want to make perfectly clear to everyone now, although I believe everyone knows it, is that what is most unusual about this case is that there is ongoing harm, not I hope harm being caused but harm being suffered by individuals, individual people, as well as the governments that serve them. The parties in this case need to realize that the result in this case cannot be exactly what they want; perfection is not achievable here, and an effort to achieve perfection will leave the people who are suffering at greater harm. The parties here need to understand that where there's a public health crisis, as Covid has brought home, many views need to be taken into account. There is no one perfect treatment.

I want this case to move, and I will make it move

if the parties don't start accommodating each other. And one way to do that is to tell the Debtors we don't need consensus on everything. You have an active, well-informed and diligent official creditors committee that represents everyone.

The Debtors themselves, as far as I can see in this case, have been acting as good appropriate fiduciaries. If people cannot see other peoples' points of view and some consensus can be built, we need to move ahead. So I fully understand Mr. Huebner's point that we cannot set a date for a plan here. But if I hear a month or two from now that people cannot set aside their views as to what is the perfect use for the money that is available here and agree to share on how that is to be used, I will be taking steps to move the case along separately, and it's shame on us if we don't do that. This is flesh and blood.

Secondly, if there is an expectation here of a plan that will have, in return for a contribution, releases. When I say discovery should be X and I say it in a way to avoid further litigation over discovery, then everyone should understand it should be X and not Y.

Now I appreciate that I got the letter from the creditors' committee yesterday and the Sacklers and others should have time to respond and they can respond by Friday, I think you all know why I am extremely disappointed by what

I read in that letter. So unless it's not true, I will be issuing orders.

I want the firm, if we're to have a conference, I want Dentons on the phone and I want the new firm on the phone and they will be accountable, as will anyone who has been instructing them to do something other than I instructed to be done last May, the beginning of May. Hedge funds may play games like this -- and, frankly, although it's important to a company and the people it employs to come out of bankruptcy, I will give hedge funds some time to shoot themselves in the foot. State Attorneys' General and governments shouldn't be doing that, nor should the Sacklers.

You must be thinking practically here to get this company out of bankruptcy and devoting its money to the Debtors, so enough said on that topic. I'll be looking for the order from the Debtors on the motion that was on for today.

MR. HUEBNER: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 12:28 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 19-23649-rdd
- x
In the Matter of:

PURDUE PHARMA L.P.,

Debtor.
- x

United States Bankruptcy Court
Tele/Video Proceedings
300 Quarropas Street, Room 248
White Plains, NY 10601

August 25, 2021
10:03 AM

B E F O R E :
HON ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re Continuance of Confirmation Hearing From August 23, 2021

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Drain. We're here in In Re Purdue Pharma L.P., et al., on the second day of oral argument in relation to the Debtors' request for confirmation of their amended Chapter 11 plan.

MR. HUEBNER: Your Honor, with apologies, we're not hearing any audio. I'm not sure if the Court needs to be heard yet or not. I apologize for interrupting.

THE COURT: Thank you. I thought it was off of mute, but it wasn't. Let me start over again. Thanks.

Good morning, this is Judge Drain. We're here in In Re Purdue Pharma L.P., et al., on the second and last day of oral argument on the Debtors' request for confirmation of their amended Chapter 11 plan.

I have the order of topics and time that the parties have agreed to allocate to them, which the parties circulated overnight. And I'm happy to follow that order for purposes of today's hearing.

MR. HUEBNER: Perfect, Your Honor. Good morning. For the record, Marshall Huebner, from Davis Polk & Wardwell, on behalf of the Debtors.

Your Honor, two things before we start the agenda. You know, as always, we have sort of a dual role as a plan proponent and as an advocate sometimes for our stakeholders, but also a shepherd of the process.

Your Honor, I think it was not lost on anybody on Monday that Your Honor expressed strong views about attempting to get to a deal with a final very small number of stakeholders not yet onboard. I believe three times you mentioned the heroic effort of Judge Chapman, who worked in Phase 3 of mediation.

I do want to advise the Court that Judge Chapman seems to have heard that, and she is absolutely back in the saddle, working extraordinarily hard, again, as a sitting judge, for, of course, no compensation, just part of public service, to try to see if anything can be done.

As I'm sure it's also not going to be a surprise for the Court to hear, further work tailoring and narrowing the releases is something that is the subject of many of the objections, and certainly the subject of a fair number of very clear thoughts from the Judge.

And so while on one hand, because there are elements that are being discussed among the parties. And I won't say more than that, except that the Debtors are working around the clock to try to facilitate to see if something can be done assisting Judge Chapman.

There are other elements as well, as there were in round 3 of mediation. There were new covenants and economics and other things. And I can't say more than that. That would be inappropriate, and so, of course, I won't.

But a fourth or additional element is the releases. Strategically, one might have argued for a position that that should be sorted used as part of a potential big set of final trades in a ground-floor mediation by Judge Chapman. But I think that would not have been the right answer.

The right answer is to fix (indiscernible) it now and give the Court and all parties comfort that people, including on the Sackler side, and facilitated very strongly by the Debtors and others, continuously recalibrating and trying to make this the best possible deal for all Purdue stakeholders.

In the middle of the night last night, we filed the ninth amended plan of reorganization, which really does one thing primarily, which is substantially further narrow and tailor the third-party releases that I think it's fair to say lie at the heart of much of the colloquy and objection at this hearing.

And so rather than saving it to be offered in mediation, which is now basically ongoing, it's in already and there for people to see. I think some people understand it. Some people, I think, are still having it explained to them. It's very complicated. We are working around the clock on located things.

So in about 30 seconds, I will turn the podium

over to Mr. Uzzi, who will, I think, probably be in the best position to describe to describe those releases, and how they have changed, and how it is hopefully important to the objectors , and also quite important to the Court.

But before I do that, one over item in my other role, which is I do want to let the Court know that the Gulf objection, as Your Honor may remember, was argued by Mr. Luskin (indiscernible) with Mr. Tobak, negotiations towards settling that also continue, as we are. Obviously, as you've seen, you know, every time I get up, we have either another settlement or fewer objections to announce. I think everyone knows that's our MO, and we're still doing it here at the last day of oral argument. And so those are the two procedural matters before we get to the agenda.

So with that, with the Court's permission, I'd ask Mr. Uzzi to help explain the changes, and certainly in the minds of the Sacklers, you know, the changes that they made.

THE COURT: Okay. Before I hear from Mr. Uzzi, I think I ought to say two things. First, I have not spoken to Judge Chapman about her continuation as a mediator in the case, either before or after what you have just described. Nevertheless, I'm quite grateful to her, you know, if she's been willing to take on that role. And I obviously encourage the parties to try to resolve their differences, including with her really dedicated and expert efforts,

which she brings to every mediation, and certainly from my reading of her mediators report that was filed earlier in the case, she brought to this one. So I welcome that development. Although it's a surprise to me. But I'm grateful for it, and it's certainly in line with the admonition I gave to the parties on Monday.

Secondly, unfortunately, I have not had the opportunity to review the change in the ninth amended plan. So I'm largely in listening mode here, not commenting mode. But again, I welcome the parties continued work on the scope of the release and injunction of third-party claims.

So, having said that, I'm happy to hear from Mr. Uzzi.

MR. HUEBNER: Your Honor, before he begins, just two very quick notes. To give credos where they're also due, the first round mediators also continued after mediation formally entered (indiscernible) mediation --

THE COURT: I understand that.

MR. HUEBNER: -- privilege --

THE COURT: And, you know, we've been really fortunate to have world-class mediators in this case, and they take their role -- they took their role and take their role seriously and continued beyond the original time allocated. And you know, again, I encouraged that under the mediation order. And similarly, even though my mediation

order for Judge Chapman set a specific deadline for the parties, and as everyone knows, deadlines are important, based on what you've described to me, the discussions that are ongoing now are similarly under that order. If you face a similar deadline, which is I intend to rule on Friday on this request for confirmation on the plan.

MR. HUEBNER: Yeah, Your Honor. That was the tentative point I was going to make. I actually did not have time to double check it, but hopefully my memory is right, that the order actually expressly contemplates post-mediation conversations that I actually believe keep our -- remained governed by the confidentiality shields. And so, everyone who is having those conversations is treating them as such.

So with that, Your Honor, let me turn my microphone off and turn it over to Mr. Uzzi to explain what was filed overnight.

THE COURT: Okay.

MR. UZZI: Thank you, Your Honor. Gerard Uzzi of Milbank, on behalf of the Raymond Sackler family.

Your Honor, I think what I'd like to do here is explain to you what we try to accomplish and the changes, but not necessarily go through those changes line by line. Obviously, if you'd like us to do that, we can do that as well. But at least, you know, first give you the conceptual

overview, and then I'll take direction from the Court.

Your Honor, I mean, I would agree with Mr. Huebner. You know, we did not and weren't interested in (indiscernible) these things up as a bargaining chip in mediation, further discussions. What we've tried to do is be sponsored, not only to the Court's comments, but also to comments of some of the objectors, to the extent that we could.

Before I get into the actual changes, Your Honor, just for the sake of clarity of the record, I think there are a few things that I can say that I hope is helpful as it relates to what the releases don't cover, never have covered. And you know, one of those things, of course, is criminal liability.

And I know Your Honor knows that the releases don't cover criminal liability. There continues to be, you know, some innuendo and clouding, I think, that issued both inside this courtroom and outside. And I thought it might be helpful, just for on the record, to hear a Sackler representative say these releases do not cover criminal liability. Hopefully, that puts any debate on that topic to an end.

There's been a number of suggestions of the tax liability being released. Tax liability is expressly carved out. There is no release of tax liability. It doesn't

matter who the taxing authority is. There's no release of tax liabilities.

There also has been some suggestion that we were attempting to shield releasing parties from their future conduct. The release never contemplated that. We've clarified that. But it was something that was never in the release, and I thought it might be helpful just to clarify that.

As far as the comments we've tried to address now, that were admittedly picked up by the release, the first one is one that I would characterize as the undiscovered McKinsey issue, or the undisclosed McKinsey issue, or something to that effect. And the release was drafted, Your Honor, against a backdrop of the Sacklers and their entities having been thoroughly examined and thoroughly investigated. And we just, in the drafting of the releases, believe that if there were that type of party, somebody would come to us, they would identify it, and of course, we would add to that excluded party list. And that's the spirit of how we had drafted that release in (indiscernible).

What we originally proposed on Monday to address what I'll call the undisclosed or undiscovered McKinsey issue, is a carve out for -- we used the defined term willful misconduct, which was probably not a good defined term -- but to really pick up some intentional wrongdoing.

As we worked on this over the last day, we decided to make really what I think is a material change here as it relates to the third-party releases of the shareholder consultants. And that is to simply carve them out. And so the shareholder consultants are carved out -- with one exception I'll talk about in the second -- are carved out of the release, the third-party release, completely. And we hope that that just dispenses with the issue.

The one consultant that's not an outside third-party firm, which then exists on what used to be Exhibit H -- and we've updated it to be Schedule X, I believe, now -- is simply Norton Rose, Your Honor. And they do fit into a different category. They have been both the family and the Debtors' -- with their predecessor, Chadbourne & Parke, counsel to the firm for decades. They have been subject to discovery here. They have been investigated. And we do think it's appropriate to keep them on the exhibit. But we've otherwise carved everybody else out.

Because of that, we then removed the defined willful related party claim, as we just don't believe it's necessary anymore and doesn't and shouldn't probably apply to the other parties that were in the release who are similarly situated to what I would call the core releasees here.

I'll note further, Your Honor, if the exhibit had

my permanent, Milbank -- and I don't think I'm stretching to say the release of professionals is pretty standard in any release -- but we heard the commentary of why does a certain named firm need a release.

The fact is, my firm doesn't need a release, so we carved ourself out. And we did that because I, along with all of my co-advisors here, we do not want to be a distraction here. So Milbank is out, and the other named third-party advisors are also off the schedule. And we hope that that goes a material way to addressing all of the concerns.

The other issue we tried to address, Your Honor, is to be further responsive on the non-opioid-related claims. And as you'll remember from Monday, Your Honor, there was some colloquy over what did that mean. First, I'll say we've added "reckless" to the definition there of the type of conduct, the predicate conduct or the predicate state of mind, I should say, that would trigger that.

Your Honor asked me if that definition picked up fraud, and I incorrectly said no. And I apologize for that. I went back and read it and I think under that definition, it already picked up fraud. And actually, things are a lot broader than fraud, are not limited to fraud. And the operative word, when you take a look at it, Your Honor, is "unlawful." All right? So, clearly, fraud is unlawful, but

unlawful isn't limited to fraud. And I think that that word really does it. But we did add fraud or fraudulent conduct to the definition, just to be clear.

We changed then, Your Honor, the definition from willful misconduct to non-opioid actual misconduct claim. We just think that that is a more descriptive term. I've had a lot of semi-scholarly colleagues try to tell me that willful misconduct was confusing, so we just try to take that confusion out. That, Your Honor, applies to all the releasees. So if all the releasees are on for non-opioid liability are subject to the non-opioid actual misconduct claim.

And then, if you look -- when you go through this, Your Honor, and you know, I will give you the cite. In 10.7(v), where the heaviest blackline is, that is simply to pick up the indemnification claims that could otherwise be asserted against the Sacklers. If we're carving out from the releasees the -- I'll call it the McKinseys of the world -- we can't have, of course, a backdoor coming back in. And we just clarified that language in there. It was always like that, Your Honor, but we just needed to change the words in order to pick it up because of other changes we've made.

Your Honor, that's the overview. I'm happy to go into some detail. I'm also happy to answer any questions

you might have.

THE COURT: Well, again, I haven't had a chance to parse the language, but I appreciate the overview. I guess what I would say -- and I appreciate that these changes, as you've described them, are constructive and have narrowed considerably the release -- is that I'll carve out some time at the end of today's argument for people who have objected on the basis of the breadth of the release, and that only. Not any other aspects of the release, but just the breadth of the release, to have the chance to point out to me their view, if they still have it, that the releases still overly broad.

So I think all of the people on the call today or on the Zoom today have the proposed allocation of time for oral argument today. And just at some time at the end of that schedule for people to point out to me if they want to, and for the Debtors and others to respond, issues that remain as to the breadth of the release language. And that will --

MS. UZZI: Thank you --

THE COURT: -- give me a chance to look it over at the lunch break also.

MR. UZZI: Very well, Your Honor.

THE COURT: Okay. Thank you.

MR. HUEBNER: Okay. So, Your Honor, I believe

that brings us to the first item on the agenda, which is best interests of Ditech. Mr. Goldman asked for 35 minutes, so we're fine with that. I may run a little bit longer than my initial plan of 20, for fairness and symmetry, and because I have something I want to begin with before I actually head into best interests.

THE COURT: Okay.

MR. HUEBNER: Your Honor, there was some interesting colloquies from the Court, pretty scholarly, frankly, for those of us who are, you know, bankruptcy folks. On Pages 180-182 of the transcript, and then again on 57-259, about the factor of Metromedia that requires, or seems to contemplate, creditors being paid in full, which just makes no analytic sense, because there's nothing to release if creditors are paid in full. And Your Honor cited millennium labs and their fairness test, the much more recent Third Circuit decision, as seemingly a logical imperative and much more sensible.

In addition, Your Honor, you actually cited ourself to 1129(a)(7) on Page 181, Line 12-16, and said, you know, isn't this the right answer? Because if 1127 requires -- 1129(a)(7) requires that you're getting more than you would get in another scenario, is not definitionally fair, so that proving the best interests test may actually be kind of what the Third Circuit meant.

Third Circuit Standard, as of course I think all litigants in this case know, in their recent decision from 2019, is that, "The hallmarks of permissible nonconsensual releases are fairness, necessity to reorganization, and specific factual findings to support these conclusions." That's Metromedia at Page 139. I'm sorry -- Millenium -- I'm just so tired -- at Page 139.

So I think that's actually dead on. And so, you know, when I now will launch into my best interests argument, which is really so important because it is the view of basically everybody in the case, rather than one objector, implicitly or explicitly, that this is the highest and best recovery for creditors, and it is better than a liquidation, plus the pursuit of third-party claims. I think that actually the Third Circuit maybe had it right. And fairness means, you know, if you can't do better than what we're getting for you under this plan, what else should we be doing but this plan?

So with that, if Your Honor will let me launch it.

THE COURT: Can I -- and I, at risk of -- and I don't think it's -- it doesn't derail your argument, but I want to be clear. The best interests test, as set out in Section 1129(7), is a statutory test, and one needs to follow the words of the statute. And the courts to some extent disagree about what the statute says, based on its

plain terms.

What I was addressing contemplates one interpretation of the best interests test. But even if one takes the other interpretation of it, which is that you don't look at what one gets on one's claim in the case, you just look at what you get on the claim in the case, I think that fairness, in the sense described not only by the Millenium Court, but actually in the earlier section of Quigley by Judge Bernstein, requires some analysis, if it can be done, into what sort of recovery the enjoined parties would have if the plan were not confirmed. And that's not applying strictly the best interests test. That's a more rigorous view of fairness than one might normally apply to a 9019 settlement, in other words.

MR. HUEBNER: Your Honor, I agree completely. And as you'll hopefully here in a few minutes, I'm going to cover every alternative interpretation of 1129(a)(7), and show you why we are extraordinarily comfortable that we meet the statute's 24:16 we meet the statute's ____

Your Honor, 1129(a)(7), as of course everyone knows, requires that the Debtors demonstrate that rejecting impaired creditors who receive no less under the plan than they would in the hypothetical Chapter 7 liquidation.

Here, Your Honor, the Debtors' proposed plan is expected to distribute well in excess of $5.5 billion in

cash on account of contingent liability claims. There is no dispute that creditors will recover billions more under claims against the Debtors than they would recover if the Debtors had to liquidate.

The only possible dispute is whether the rejecting creditors could actually recover, in a Debtor liquidation on their own third-party claims against the Sacklers and others, value that exceeds all of their many recoveries under the plan, including the settlement of those third-party claims, but as to a very small number of parties is being imposed by the will and the votes and positions of the overwhelming majority. There are three principal objections why this objection fails.

First, as Your Honor just noted, the Second Circuit has not actually determined whether third-party claims should be considered at all in the best interests analysis. And other courts that are also thoughtful, do not agree with Quigley and Ditech.

The AHC argued this in their brief at Pages 155-158. I will actually rest of their papers on this point, because I actually prefer to spend my time on the assumption that it is obligatory, including for the larger fairness reasons, for us to get the Court and all parties comfortable that even rejecting creditors do better under this plan than any other alternative we know of.

So, Your Honor, if you accord with Quigley and Ditech, which is just fine for us and many others, it is clear beyond peradventure that under the holdings of those cases, we are not required to assign a specific dollar value to the potential recoveries on rejecting creditors' unknowable, inestimable third-party claims.

To the contrary, both of those cases make it crystal clear that the value of third-party claims is only to be considered when the claims are both, one, not speculative, and two, capable of estimation.

Let's take a close look at those cases. Quigley is an asbestos case in which Judge Bernstein estimated the value of third-party claims against Pfizer, Quigley's parent, based on a 19-year track record of settlements, for which Pfizer had paid over $1.2 billion and a mathematical average of 23 percent of the claims asserted against it over almost two decades. 437 B.R. 134, 146. But that two-decade track record, the claims at issue were not speculative and were capable of estimation.

In Ditech, the Debtor tried to do something really pretty sneaky, and they were caught. They actually, in fact, estimated the settlement and resolution value of the varied third-party claims for some purposes under their plan and (indiscernible). And then -- but not for these purposes. And Judge Wiles said, no way, you can't pick some

purposes and not others. You have already told me that the claims are not speculative and hypothetical, but rather that you can estimate them. 606 B.R. 544, 620-621.

The contrast to the instant facts could not possibly be greater. Unlike Quigley, there is no multi-decade history of judgments or settlements or percent allocations against the third parties to draw from.

And unlike in Ditech, the Debtors have consistently stated that the value of an individual rejecting creditor's direct claims, what they would actually recover some day if this plan failed, is the very definition of unknowable and unquantifiable.

Your Honor, given the Debtors' extensive record evidence on liquidation, including its DelConte expert report, Paragraph 9, et seq., the disclosure settlement Sections 173-175, the objectors really need to demonstrate that their own actual recoveries on direct claims in a liquidation would be massive, knowable and quantifiable.

I will stop at 11 reasons why that quixotic endeavor cannot succeed. One, the terrible destruction of estate value in a liquidation. It is uncontested and uncontestable that the liquidation of the Debtors would greatly reduce the value available to go to these very creditors. DelConte at 9; Turner at 22; disclosure Appendix B at 11. So those billions get wiped from creditor

recoveries in a liquidation.

Two A and two B, massive professional fees and totally uncertain allocation of any recovery to specific creditors from the estates in a liquidation. Liquidating the estates and resolving the hundreds of thousands of claims filed, will require a multi-year massive investment of professional these.

Liquidating the claims and resolving the relative entitlement of creditors vis-à-vis one another, once Phase 1 mediation is erased, would be an intercreditor litigation maelstrom of victims and stakeholders against victims and stakeholders, whose outcome is unknowable. The only thing we do know is that rational fees will be at least half a billion and maybe more than $1.5 billion. DelConte declaration at Paragraph 36.

And as Mr. Shore, who actually represents tens of thousands of PI victims, told the Court: "Do not forget. We are the largest group, the largest number of voters, the largest claimants." And as he had told many of us, they will be back if there is no deal under this plan.

Number 3, reduced recovery on the estate claims against the Sacklers. The estate might recover less on its claims against the Sacklers in a liquidation. Mr. DelConte sets forth multiple reasons for this in his report. See DelConte declaration at 33. This result is also described

in our disclosure statement. It's painful, but it's true. No party cross-examined Mr. DelConte on this sworn testimony.

And then we have the testimony of Ms. Conroy, who has been suing Purdue for 19 years under his partner and (indiscernible) partner, named partner, who was there alongside her. Her testimony, August 16, transcript 18, 9-22, is that this deal reflects a peace premium where we're getting more than we would get if global peace were not able to be on offer.

Four. The DOJ's claims. The DOJ has an agreed $2 billion forfeiture claim with superpriority status. They also have billions of dollars of other claims, that if the deal falls apart, they will likely assert, or likewise, in rem claims, priority claims, nondischargeable claims, because they're the federal government, et cet.

Those claims might absorb every dollar of net estate liquidation proceeds, leaving nothing for anybody else. Because among so many other things, even if parts of the deal stuck, we don't think we can satisfy the conditions for getting the $1.775 billion forfeiture credit that is in fact on offer in the settlement this Court approved, with them ironically over the objection of the remaining objectors to confirmation.

Five -- which is a coalition of sorts. Instead of

four or five or more billion dollars that non-federal governmental creditors in Class 4 are getting, they will likely get close to zero. The consequence, when you add up all the predecessor points of the value destruction in seismic into creditor reallocations that I have outlined, is massive and uncontroverted.

Mr. DelConte's liquidation analysis lays out in two of the three scenarios, Class 4 creditors get zero. Only in a high case scenario, there's $699.1 million for all creditors to share, not just the rejecting creditors in Class 4.

The objectors did not question any of these conclusions, although they had ample opportunity in days of trial testimony. I talked on Monday about my simplistic view that we're here to apply facts to law. No objector designated a competing expert. No objector submitted an expert report with a competing liquidation analysis. No objector designated a rebuttal expert, critiquing Mr. DelConte's analysis. No party even deposed Mr. DelConte. And no party spent any material time on cross-examination on these issues. If they meant it, we should have tried to prove it.

There is no evidence of any kind from any party at all that the likely recovery on their own direct claims is concrete for estimable. The Debtors' evidence that the

claims are speculative and not capable of estimation is overwhelming.

Six -- and a lot of these are tied to the public good and to helping America and Americans -- abatement. Dr. Gaurisankaran testified, without contravention, and I quote, "Abatement programs that reduce opioid misuse for a population will confer economic value to all entities that serve the same population and claim to incur costs because of opioid misuse." Declaration at 47. And that abatement results in "multiplier effects" that provide creditors, especially governments, I believe, with value that may well exceed the dollar value distributed under the plan.

In the liquidation, there can be no guarantee that all or most or even a substantial portion of the funds creditors someday recover from the Sacklers would actually have to go to abatement, and thus, this important multiplier is gone.

I do want to reiterate, Your Honor, one last time, my apology to Washington and Maryland, who seemingly passed statutes -- who did pass statutes -- of course, what they said to the Court is true -- directing their recoveries must go to abatement. I got that wrong and I'm very sorry about that. But as I also then noted, there are many, many other states whose situation is exactly the contrary, and there are tens of thousands of other creditors who would be in

line with no obligations, as they have extraordinarily agreed to in this case, to dedicate all of their recoveries, other than the PIs, to abatement.

Seven. Objectors would need to bridge a chasm of billions of dollars to win an 1129(a)(7) argument, because they are billions in the hole due to the total wipeout of their plan recoveries. And it's from there they must begin to try to argue that exclusively and solely from their own potential recoveries on non-speculative claims against the third parties, they would get more than the billions that they would make unavailable to everybody if the plan was not confirmed.

Eight. It is utterly impossible for any of the few objecting rejecting creditors to demonstrate that they, and only they -- and that's the critical phrase -- and only they, will when the frenetic race to the courthouse against third parties.

The objectors' suggestion that the Debtors could have hired a damages expert to addressed the objectors' best interest argument only highlights the staggering depth of their misunderstanding of the law. Damages are about claims that one could assert. The best interests test is about recoveries; what I actually do better than this plan at the end.

It is beyond cavil, Your Honor, that no claimant

could possibly credibly predict that the actual recovery on their claim against the Sacklers, after years of internecine warfare among creditors and disorderly races to hundreds of thousands -- or for thousands of courthouses -- is knowable. It's like trying to solve a single equation that has hundreds or thousands of variables. 4(a) plus 5(b) minus 5(c) plus 8(d) equals X? It cannot be solved.

And it has nothing to do -- nothing -- with the merits and strength and validity of the claims of any individual entity against the Sacklers. Because for an individual rejecting creditor to prove that it itself would actually recover more, it can't only show that it's likely to get a big judgment. It has to show that no one else would, and only they would.

Because logic dictates that if the three rejecting states who have made a best interests objection have meritorious claims, so do all the non-rejecting states. And if all the states have meritorious claims, then it stands to reason that many other public creditors also have meritorious claims. And if all states and tribes and municipalities have valid claims against the Sacklers, likely so do the hundreds of thousands of private contingent liability claimants.

And every one of these groups for whom the Debtor is a fiduciary has filed proofs of claim under penalty of

perjury, that they believe that they have those claims against the Debtors and the Sacklers, which is why the States' $2.156 trillion claim, as large as it is, is dwarfed 20 times over by the $39 trillion of other filed claims. And that's only 10 percent of them, because while the states' claim was liquidated, most of the other claims, 90 percent of them, were not.

Nine. Thousands of claimants would be chasing a smaller and possibly (indiscernible) of assets. Let's assume that direct claimants are able to recover every penny of the aggregate personal wealth of the individual members of the Sackler Family, named as Defendants in the third-party litigation. Claimants would still come up billion short of the $4.375 billion that the Sackler Families have agreed to pay under the settlement, and even more billions short of the $5.5 billion total in minimum projected value that those creditor standard receiver under the plan.

And during the years that people were suing the Sacklers, one would imagine the Sacklers will pay hundreds of millions or more in legal fees, and might, for example, use their assets to settle with non-rejecting creditors. So if non-rejecting creditors get settlements, then rejecting creditors even more can't do better than they would do under the plan. Which is why the intercreditor complexity, which seemingly, virtually every single party in the entire case,

except for nine, seemingly understands and has reluctantly and painfully led them to conclude that this settlement, which does leave the Sacklers with material wealth, is better for them, the claimants, than any other alternative.

Ten. Claimants cannot reasonably estimate the prospect of they themselves successfully recovering on their direct claims. I am not going to cite -- and I am most certainly not ever going to accord with or endorse the evidence and argument submitted by the Sacklers about their lack of culpability and their defenses to collection with respect to their trusts. Not now. Not ever. They are the Defendants and estate is the Plaintiff, along with many others. And if we do not settle, we will be suing them for billions of dollars. Make no mistake.

But what I am is the fiduciary and spokesman for the shareholders. The Debtors didn't vote on the plan. That's not our job. But 38 attorneys general, and the UCC, and the AHC, and the MSG, and the adult (indiscernible), and the pediatric (indiscernible), and the tribes, and the hospitals, and the TPPs, and the rate payers, and the Board's Special Committee, considered a great, great many things in deciding to accept this settlement.

I think it is fair to say that while we disagree, Jersey law, Wyoming and Connecticut trusts, and Mr. Cushing's testimony, do raise litigable issues with respect

to the ability to recover on direct claims against the Sacklers from the very material assets held in their (indiscernible) trusts.

As I noted on Monday, Your Honor -- ironically, I think it was Paragraph 239 of our brief -- the Debtors have the strongest claims against those trusts, because we have in rem claims based on the irrevocable vested in the estate of the fraudulent transfer and analogous claims. Those are not direct claims. So they don't figure into the hypothetical 1129(a)(7) showing when you're trying to weigh a direct claim as an add-on to what you might get in a liquidation.

And Your Honor, in this regard, the litany I just read to you, it is incredibly telling that in this case, with over half a million creditors, there is one objection, one, that makes a best interests objection. One. Mr. Gold's pleading on behalf of DC, Maryland and Connecticut. And with no disrespect intended, because I think he's doing a terrific job and he's a very serious lawyer, he made that objection in one page of his brief. No factual support for the types of claims that would need to be proved.

THE COURT: Actually, I thought it was just Connecticut --

MR. HUEBNER: Finally, Your Honor --

THE COURT: I thought it was just Connecticut and

Maryland on that one. DC joined the other one --

MR. HUEBNER: Oh, Your Honor, I apologize. I thought that objection said filed on behalf of DC, Maryland and Connecticut. But if DC didn't join that argument, then it's one objection on behalf of two parties, as opposed to three. But I think, you know -- I think the point is the same.

THE COURT: You know what? I was wrong. It does include DC.

MR. HUEBNER: Your Honor, Judges are never wrong.

THE COURT: Well, I was wrong.

MR. HUEBNER: Number 11. Your Honor, Number 11. Claimants rejecting creditors making a best interests argument cannot possibly quantify or know or estimate the massive cost and delay to them of lengthy and chaotic jurisdiction, because as many as 58 jurisdictions all over the world. No creditor could possibly allege without speculating what they would actually recover net of the cost of litigation and collection and delay, after years of (indiscernible) warfare by thousands of creditors with all against all.

For these 11 reasons, Your Honor, among others, the direct claims of three creditors out of the hundreds of thousands who have raised a best interests test, I believe are literally the archetype -- actually the archetype of

claims that in these complex circumstances are speculative and not capable of estimation.

Your Honor, that brings me to my third and final meta point. While I hope that my reasons each individually, and certainly collectively, demonstrate the views of so many for whom I'm speaking today, that rejecting creditors would not do better in the liquidation, and would do ever so terribly worse even inclusive of their direct claims. I have overwhelmingly, in fact, perfect empirical evidence from July and August of 2021 for the unassailable veracity of this position.

38 states, 80 percent of the voting states have done the work for years, litigating against Purdue and the Sacklers, weighing the alternatives, and fighting like hell for their citizens against Purdue and the Sacklers. And they have concluded that the Plan provides superior value to states than does liquidation. This is true for this -- many other creditor groups, who I will not again list, who support this Plan. And between all these parties, they are represented by many of the most sophisticated, and one might argue fearsome, mass tort plaintiffs' firms and other litigation firms in this country whose clients I can guarantee you, having done almost nothing else for three and a half year, have suffered at least as much loss and have unthinkable antipathy for the Sacklers as any of the Plan

objectors.

In stark contrast to the wild speculation to the nth power, they would be involved in assessing what an individual rejecting creditor, out of 614,000 competitors, would actually recover in liquidation, the market of states identically situated to the one best interest set of objectors, has spoken on this point with extraordinary clarity, and chosen which gives them the better recovery.

And of course, Your Honor, the bankruptcy system under the guidance of the Supreme Court, love market tests to prove things. See e.g., 203 N. Lasalle, 119 S.Ct. 1411. There's no better way to know what something is worth than what people will actually choose when faced with a choice. 80 percent of identically situated claimants clearly think that their direct claims against the Sackler cannot close the more than $5.5 billion gap between what people are getting under the Plan to help their citizens in these terrible times. And the alternative, whose worst feature would be creditors fighting one another and competing another.

And for the record, Your Honor, the $5.5 billion number that I have been using is exceedingly conservative because it does not take into account, as our evidence shows recoveries on insurance proceeds, which we hope are the billions, and terminal asset value when NewCo is monetized,

that it's slated also to flow all but exclusively to governmental creditors, these very objecting creditors, for abatement with its multiplier under the Plan.

I also didn't count PHI, which many people believe itself could be worth billions, especially to states by avoiding further damage, and helping their citizens, or the public spillover multiplier. None of that is in the math. $5.5 billion is just the cash in the sworn evidence and nothing more.

And, Your Honor, this is therefore a much more central plaintivist case than just best interest. The value hold that any alternative to this Plan, and certainly liquidation, would create for all creditors, but for the states far more than anyone else, is way bigger than $5.5 billion, and it cannot possibly be refilled and then exceeded by a liquidation and direct suits against the Sacklers.

I should also note, Your Honor, that I did not include or take into account Mr. Prices argument that Your Honor Mr. Gold about on Monday, that over $4 billion out of the $10.4 billion in cash that the Sacklers took out of Purdue, which in 2008 and 2019, went directly -- directly to state and federal governments at the Sacklers' request to pay their person income taxes. Because they set Purdue up as a limited partnership, the Sacklers, it's not a taxpayer.

I believe, Your Honor, cited a figure of $285 million in the Atkinson declaration about Connecticut; ironically, the objector on best interest ground. And the federal government whose number is 10 times that, who might face serious exposure as the transferee's a preferential transfers that were made for the benefit of the Sacklers. There is a day they have to pay that money back so that all creditors could share it, not just the data to keep it.

And that also goes into best interest because in a liquidation, that money might come back into the estate to be shared by all. But as I said, I left many, many things out of my core analysis because it was enough.

To assume, Your Honor, that 80 percent of the states are wrong about what is in the best interest of states is not rational. And even out of the nine objectors, only two states and D.C. even made the objection at all, which is more telling. States have accepted the Plan, as all other creditors have, by an overwhelming margin -- all other creditor classes and groups have because they believe that while it is painful and difficult and horrible to the lives of many to leave the Sacklers with wealth, the Plan furthers their best interests and provides value billions in excess of what would result from the meltdown of the estates and resuming the litigation free-for-all that prevailed before these cases began.

Your Honor, except for lawyers, nobody does better in a liquidation, nobody, which would destroy so much that so many have worked for so long to bring -- to bring to fruition, to help victims and abate the opioid crisis. We ask that the best interest objection be overruled.

THE COURT: Okay. Thanks.

Mr. Goldman, I think you're taking this on behalf of Connecticut, Maryland, and D.C.?

MR. GOLDMAN: Yes, Your Honor, and I can add to that list since we have been coordinating among all the objecting states, and the states of Oregon, Delaware, Vermont, Rhodes Island, and Maryland, and Washington.

THE COURT: Okay. Although I don't think any of those actually raised this issue.

MR. GOLDMAN: I would correct the record, Your Honor. Washington and Oregon did join in our objection at Paragraph 104 of their objection.

THE COURT: Okay.

MR. GOLDMAN: So, there are actually five -- well, four states and the District of Columbia that are advancing this objection.

THE COURT: Okay.

MR. GOLDMAN: So, let me proceed. I think Mr. Huebner did a good job of explaining the best interest test, but if I could just go over it briefly to set the framework

for my argument? As you mentioned, it requires that in a peered class of creditors, each of the class members must either accept the Plan or will receive under the Plan, at least as much as they would receive in a Chapter 7.

THE COURT: Actually, that isn't the specific language of 1129(a)(7), right? The provision says, "With respect to each impaired class or claims... each holder of a claim or interest of such class has accepted the plan; or" -- and then here's the key language -- "will receive" will replayed -- "or retained under the plan on account of such claim... property of a value as of the effective date of the plan that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title". I emphasize the word, "so" because I think it's arguably there for a reason. And as the AHC objection points out, it would seem to modify on account of such claim, and therefore, focus the Court on the claims' recovery in Chapter. 7, as opposed to just recovery generally.

I don't know if you have a response on that point?

MR. GOLDMAN: Of course, both the courts in Quigley and Dietech have rejected that --

THE COURT: They -- well, actually, they didn't reject it in that the argument wasn't made to them. There's no discussion of that reading or the meaning of the word, or

-- of "so" in that provision, in either of those cases that they cite. But I appreciate that Judge Garrity and Judge Bernstein are certainly -- or -- but Judge Bernstein's now retired, so are or were certainly excellent judges, but it's an argument that's been made to me that I don't think was made to them.

MR. GOLDMAN: Well, I would point out first that the Debtor has not argued for any back in their brief --

THE COURT: But AHC did. The --

MR. GOLDMAN: Yes.

THE COURT: -- the Ad Hoc group of governmental entities.

MR. GOLDMAN: I would -- I would respond that I don't think "so" would change the idea that was expressed in the Dietech and the Quigley cases, that in the Chapter 7, those creditors would be retaining on account of their claim, rights against third parties. That plan proposes two weeks.

So, I would argue that the single word "so" would not alter the analysis that was articulated in both of those cases that where they distinguished between the Chapter 13 test, which doesn't include the word "retain," to conclude that what they would retain in Chapter 7 is the right to go against third parties who are proposed to be released.

THE COURT: Okay. Well --

MR. GOLDMAN: That's -- that's fair.

THE COURT: -- again, I -- as I said to Mr. Huebner, I'm not sure ultimately this matters because I think consistent with the section of the Quigley case as well as other cases that have considered plans that have sought to impose a third-party release or injunction, it is incumbent on the Court to look at what's being given up under the plan in terms of evaluating that request, whether or not it's under 1129(a)(7), too.

So, I just wanted to note the issue. I -- to me, I can't ignore the word. I will note also that "claim" is not defined as a claim against the debtor in 1015 of the Code. On the other hand, it would, I think, open up a fairly large can of worms if courts started to look at all sorts of recoveries from third-party sources, that one would get under it in Chapter 7 as a mandatory exercise for confirming a plan.

But maybe it's -- maybe it's academic given the larger point that I think controls here, which is that I have to look at -- beyond the 9019 analysis because that really applies to the Debtors' estate and creditors -- what it is that the injunction of third-party claims would deprive the objectors of, or alternatively, whether it's actually a fair deal for them.

MR. GOLDMAN: May I proceed, Your Honor?

THE COURT: Sure. Yes. Go ahead.

MR. GOLDMAN: Okay. So, as the Dietech court observed, according -- from an earlier Southern District case, the command of Section 1129(a)(7)(ii) is perhaps the strongest protection creditors have in Chapter 11.

I think Mr. Huebner's argument that because 80 or 90 percent of the states have accepted the Plan, should somehow mean that the best interest test is satisfied. Well, if you go with the majority or super-majority of creditors who are voting in favor of the Plan, that essentially wipes out the purpose of the best interest test, which was -- is to protect the dissenting creditors. It's a totality to say that because the majority voted yes, they must be right.

That is a sophistic, S-O-P-H-I-S-T-I-C --

THE COURT: Right.

MR. GOLDMAN: -- argument.

THE COURT: Right. The purpose of the test is --

MR. GOLDMAN: So --

THE COURT: -- really to protect the minority on your -- I understand that.

MR. GOLDMAN: Fine. And the Plan proponent bears the burden of proof to demonstrated with evidence that the test has been satisfied. They can't shift to the burden to the dissenting creditor, as suggested by Mr. Huebner, to

prove what it would recover on its direct claims. It's the Debtors' burden of proof on best interest.

And just to remind the Court, the dissenting creditors here are California, Connecticut, Delaware, the District of Columbia, Maryland, New Hampshire, Oregon, Rhode Island, Vermont, and Washington.

And the best interest of creditors requires a comparison of what those dissenting creditors would receive under the Plan, and what they were to receive in a hypothetical litigation. It doesn't say what all of the Class 4 creditors would receive under the Plan in relation to what they all would receive in a liquidation. The analysis is focused on the dissenting creditors. And for that first part of the test, the Debtors did not even present evidence of the amount the dissenting creditors would receive under the Plan.

Now, although Mr. DelConte testified that it would be a multiplication exercise --

THE COURT: No, I actually have --

MR. GOLDMAN: -- based on the allocation --

THE COURT: -- I actually have a chart of what each of those states would receive under the Plan and I don't think that's controverted.

MR. GOLDMAN: Well, my point is, they didn't present evidence of that, Your Honor, prepare a chart. It -

- like --

THE COURT: I mean, I believe it's -- I believe it's in the record. I -- we -- I didn't -- we didn't make it up.

MR. GOLDMAN: Be that as it may, they didn't present it in their brief as to what we would receive or in argument to make the comparison of what we would receive in a liquidation.

And on the other side of the equation --

THE COURT: Oh, I'm sorry. I thought you -- I don't have a specific number of what they would receive in a liquidation. I do have what they would receive under the Plan, at least an estimate of what they would receive.

MR. GOLDMAN: That's what I meant. That's what I meant, so I acknowledge that.

THE COURT: Okay.

MR. GOLDMAN: All I'm saying is there wasn't -- that wasn't presented by Mr. DelConte, it was presented in the Debtors' brief as to what we would receive, to make the comparison.

And on the other side of the equation, because in Chapter 7 there would be no third-party releases, it's our contention there must be some proof of what the dissenting states would receive if they were permitted to go forward against the Sacklers. And yet, no such proof was provided.

Mr. DelConte testified that no attempt was even made to estimate or project what the dissenting states would recover on claims against the Sacklers. That was at the 8/13 Transcript, Page 61. And that his liquidation analysis did not include the value for any of the direct claims of Purdue creditors against any of the Sacklers. Ant that was at Page 58 of his testimony.

Indeed, the Debtors did not even attempt to ascertain university -- universal creditors in these estates that are asserting claims against the Sacklers. We acknowledge that Mr. DelConte, at Page 57 of his testimony, that failure stands in stark contrast to the evaluation that was done in the Dietech case by Alex Partners. He should have at least attempted to identify and put a settlement value on the consumer claims that would have survived in Chapter 7 case in Dietech, and could have been asserted against the buyer of the consumer credit agreements there.

The Debtors attempt to excuse their lack of proof with the argument that the claims are speculative but not capable of estimation, that is not supported by anything other than the Debtors' counsel's say-so. The same argument was made by the debtors in Dietech and it was squarely rejected.

THE COURT: Well, it --

MR. GOLDMAN: There, the --

THE COURT: -- it was made, but obviously it was rejected because they'd actually quantified them.

MR. GOLDMAN: They tried -- they tried to quantify them, and the court held that that was not acceptable proof. And the consumer claims there that would have been extinguished if --

THE COURT: But even as -- even as quantified, there was no countervailing benefit at all in return for them.

MR. GOLDMAN: In the sense of -- I'm not sure I understand what Your Honor means.

THE COURT: There was no showing of any real benefit to the -- to the consumers that were giving up those claims other than the $5 million. So, you had $252 million versus $5 million.

MR. GOLDMAN: Well, I understand that, Your Honor, my -- my point is that the claims -- the consumer claims -- that would have been extinguished under the Plan by the 363 Sale of the consumer credit agreements, would have been available to assert against the buyer in Chapter 7, a buyer of the consumer credit agreements. And they were based on very attenuated claims.

There were account misstatements, claims -- wrongful -- claims of wrongful foreclosure, unfair collection practices and the like, and they gave rise to

potential claims under the Real Estate Settlement Procedures Act, the Truth in Lending Act, Fair Credit Reporting Act, and Fair Debt Collection Practices Act. All those claims were unliquidated.

And based on the analysis done by Alex Partners, 3,900 proofs of claim were identified as being consumer-related, and 265 proofs of claim having been matched to pending litigation. No such analysis was done in this case.

THE COURT: But in -- in Dietech, Dietech and its predecessor had a history of dealing with these types of claims and with settling them, which was a basis for Alex Partners' analysis.

What I have here is something more attenuated. I have the settlements from the 2007 period. I have the settlement with the State of New York where the Sacklers themselves paid $75,000. I have the settlement more recently with the State of Oklahoma, where they paid $75 million. And I have a number of complaints, some of which have survived motions to dismiss, although largely on procedural grounds -- those motions being made largely on procedural grounds, such as noncompliance with federal law, preemption, or jurisdiction grounds. So, you just don't have the same type of track record here.

MR. GOLDMAN: You don't have the same type of track record, but I would point out that in neither of those

cases did the court hold that some sort of settlement history was a prerequisite to, you know, the finding that they weren't speculative or remote.

THE COURT: That's true.

MR. GOLDMAN: There was a settlement --

THE COURT: But they -- but they did rely on the settlement history.

MR. GOLDMAN: Oh, well, it's -- it would be hard to dispute that, Your Honor, and I do agree. However, I would point out in Dietech that the settlement history was only for about a year and a half, and it didn't include that many claims. That's not to say that because there is no settlement history, by necessity, claims are speculative and remote.

Remember, the Debtors, as Mr. Huebner pointed out in a prior hearing, there were a total of 18 experts that were hired in this case, albeit not all of them by the Debtor. And I find it more than curious that on this one issue, given all those experts and how creative the Debtors have managed to be in this case, didn't present any expert even on the issue of whether the claims themselves were speculative and incapable of estimation. They're just asking you to make that conclusion based on their say-so.

Mr. DelConte was not an expert on estimating claims or affixing damages. He said -- he gave the party

line, that, well, we just didn't feel comfortable that we could estimate these claims. But he wasn't the expert that was hired to do it. In fact, he acknowledged that the Debtors didn't hire an expert to do that or even to tell the Court that they weren't estimable.

THE COURT: Fair point.

MR. GOLDMAN: I just, again, point out and I recognize the difference on settlement history, but in Pfizer -- or Quigley as well, the claims were unliquidated and disputed, albeit there was some history for the court to evaluate. But again, my point is, it's not a necessary condition. No court has held that. And in Dietech, none of the consumer claims at issue have even gone to judgement.

I would also point out that --

THE COURT: But there had been -- but there had been other consumer claims that had gone to the stage where they were settled.

MR. GOLDMAN: Correct. And my point is they hadn't gone to judgment.

THE COURT: These particular ones, yeah.

MR. GOLDMAN: Yes, yes.

THE COURT: But I think there were similar claims that had gone to judgment as well as some being settled. I mean, frankly, I think they're some that have been ruled on in the Southern District Bankruptcy Court.

MR. GOLDMAN: Your Honor, I'll defer -- I'll defer to you on that. I just -- I don't -- my -- I thought that based on the settlement data they had, that none had gone to judgment, but I'm not completely sure about that --

THE COURT: Okay.

MR. GOLDMAN: -- now that Your Honor has raised the point.

The fact -- it's ironic that the fact that no settlement and litigation data is available here is the result of the Debtors' own doing. I mean, the states have been prevented from continuing with actions against the Sacklers for almost two years by the preliminary injunction, that the Debtors were asked -- weren't even successful in getting. They shouldn't be able to turn around now and use that standstill to argue that the claims can't be valued because there's no settlement data.

But if the states had been permitted to go forward, we may very well have had some settlement data or judgments in either direction for the Court to make a decision on this task.

THE COURT: But I guess that goes to the other point, which is the primary point I think that the Debtors have been making, which is they have focused only lightly on the strength of the states' claims against the Sacklers and very heavily on the recovery that the states would have on

those claims.

MR. GOLDMAN: They haven't focused.

THE COURT: They have focused primarily on the recovery that the states would have on those claims.

MR. GOLDMAN: Yes. And I -- I will get to that.

THE COURT: Okay.

MR. GOLDMAN: Point, Your Honor. But before I do that, I'd like to address the argument that they make in their brief that in order for it to be true that holders of all third-party claims would be better off in a liquidation because of the value of claims released under the Plan, the aggregate recovery due in those claims, it would be -- it exceeds $4.8 billion.

Now, Mr. DelConte confirmed, the Debtors made no attempt to even ascertain the universe of creditors that are asserting claims against the Sacklers. The Debtors are simply assuming that every creditor in the case would assert claims against the Sacklers and that all those claims would be completely homogenous, would not vary in their merit, or type of claim, and that is simply not a valid assumption.

They did not do the analysis that was done in Ditech to see which creditors were asserting claims against the Sacklers, and I'm not aware of any proof of claim in the case that was asserted against the Sacklers as opposed to the Debtor.

Second, the best interest test requires looking at what the dissenting creditors would receive on their direct claims. We'll recover, I acknowledge recovery, and now with the holders of all third-party claims, which the Debtors haven't even identified, would receive, in a hypothetical --

THE COURT: But I think the point is the dilutive effect of the claims that actually are, we know, just leave it to that. The claims of the individual states filed against the Debtors, and I think we know a fair number of the governmental entities, non-state governmental entities, as well as the liquidated value of those claims.

I think their point is that even if you confine it to that aggregate amount, there would be an enormous dilutive effect, not that you would measure what the others got, but that the effect of their pursuit of those claims would dilute the objector's recovery, along with various other things too, like the cost and delay.

MR. GOLDMAN: I do understand the point, but I'm not sure that it's a valid assumption that every state is asserting claims against the Sacklers; not all states did file claims against the Sacklers. I don't think any effort was made to identify which complaints were actually filed. And if they weren't filed, which states intended to make claims against the Sacklers, but not because of the Chapter 11 filing in September of 2019 and the preliminary

injunction.

So my point is they simply haven't been identified. They've asked Your Honor to assume that everyone would make claims against the Sacklers, but there really is no evidence that all of them would is my point.

And as to the competing claims of the estates against the trust, I would submit that analysis ignores that if just three states get judgments against one or more of the Sacklers, they could be put into involuntary bankruptcy where the interest in their offshore trusts would be susceptible to becoming property of their estates. No analysis was done on the effect of a potential bankruptcy filing and what that would mean in terms of their interests in the trusts and whether the estates' claims against the trust would prevail or have priority over those interests that could possibly become property of the estate.

THE COURT: Can we just --

MR. GOLDMAN: There's no --

THE COURT: I think you're making two points there and I want to just make sure I understand them.

There would be estate claims that would be asserted by Purdue in a liquidation against the trust, fraudulent transfer claims. We do have expert testimony on that, and as well as the recoverability of that. Parties have said that they would dispute it if, in fact, there was

litigation, but they haven't disputed it in this case. Under the stipulation, there's no adverse consequence to them for having not disputed it.

And then I think you're saying that in a Sackler parties bankruptcy, the assets of the estate or his or her estate would become property of the estate. But there is testimony, I believe, that most, if not all, of those trusts are spendthrift trusts, which you would have to adjudicate in, I believe, Jersey.

MR. GOLDMAN: Well, to the extent those trusts are self-settled with monies from the settlors, I think they're vulnerable to attack. The cases cited by the Debtor in its brief about the Greenwich v. Tyson case in Connecticut, they all presume that the trusts were not self-settled. Self-settled trusts are not given protection from creditors.

So I would just make the point that they could be vulnerable to that type of challenge in an individual bankruptcy. But even getting beyond that, you know, the --

THE COURT: But again, there would be a factual determination of that in a Sackler bankruptcy, an individual Sackler personal bankruptcy, but then you'd have to enforce that judgment against the assets of the trust, which I think mean you'd have to go through Jersey. And when I say Jersey, I don't mean the state of New Jersey, I mean the bailiwick of New Jersey.

MR. GOLDMAN: I understand. I understand what you mean.

THE COURT: Right.

MR. GOLDMAN: And I acknowledge that, Your Honor. But I know the states, the states would be poised to do that I'm sure.

THE COURT: Well, they might well be poised, but they didn't cross-examine Mr. Cushing on their ability to actually move from being poised to collecting.

MR. GOLDMAN: Well, I'm merely pointing out that that analysis on the bankruptcy aspect of this was not done in terms of an individual bankruptcy of any of the Sacklers that might suffer judgments from the states.

And beyond that, I'm presuming since they would be themselves the subject of Chapter 11 cases, their post-bankruptcy income would also become part of their estates and, you know, going forward.

So the trust would not be the only source of recovery. You'd also have their interest in the IACs that would come into their bankruptcy estates and potentially -- well, basically, all of their assets and interest in property, and no analysis was done on that.

And I think that it's important that it had to have been done because in the absence of a confirmed plan and if the states are committed to go forward, we would

maintain it's likely that the estates would obtain judgments against one or more of the Sacklers and is a likelihood that they could be subject to a bankruptcy proceeding.

And I would just also note that this idea that the disclosure statement and the assumption that these claims are just speculative and not capable of estimation shouldn't be held to satisfy their burden of proof on the best interest of creditors test, given its importance to dissenting creditors like the ones we have here.

As the Bankruptcy Court stated in In re. Mcorp, 137 B.R. at 228, a proposed plan of reorganization may not be confirmed where the evidence is not sufficient on which to base an independent determination that the proposed plan is in the best interest to creditors. And I submit that was not done here.

Just to briefly address a few points that Mr. Huebner made. I don't want to forget those.

I viewed his point that we can't prove the authority that we can prevail on our claims or get a recovery as effectively shifting the burden of proof on the best interest of creditors test. It's not our burden to prove what we would recover. They made this point in their brief that we didn't submit expert testimony on what we'd recover. It's not our burden of proof.

On this issue of the taxes that Connecticut and

other states may have received from the tax distribution, I think is a complete red herring. Each of the states was immediate transferee of that money. So if we took in good faith and without knowledge, we're protected under Section 550, and there's no colorable claim that the states didn't take tax money in good faith.

With that, Your Honor, I --

THE COURT: So the states -- I mean, I think -- I don't want to really -- I think that the personal injury claimants would say, well, who was supposed to be regulating Purdue if not its home state and the federal government, the two of which got the most taxes. So I guess that comes down to whether a failure regulation warrants any sort of either presumption of knowledge as to the taxes or some basis to subordinate claims.

MR. GOLDMAN: I understand the theory, Your Honor. I'll just say that is quite a stretch.

THE COURT: Well, I think it would be an argument. Let's leave it at that.

MR. GOLDMAN: I'm happy to leave it at that, Your Honor.

THE COURT: And personal injury lawyers, I'm sure wouldn't hesitate to make it; whether it'd win or not is another story.

MR. GOLDMAN: With that, Your Honor, I'll give the

floor to any rebuttal.

THE COURT: Okay. Thank you, Mr. Goldman.

MR. GOLDMAN: Thank you, Your Honor.

MR. HUEBNER: Your Honor, I think I'll be relatively brief, but there are some things that were said that -- there were quite a few things that were said factually, but I think it's worth letting everybody know it.

And, you know, this is actually a much more important conversation that he raised than just best interests because in many ways, this is the heart of everything, which is why are so many people in favor of doing this as opposed to its alternative. And so, I actually embrace a demanding Third Circuit standard that this is the fairest, best outcome under extraordinary outcomes, which is why we didn't actually brief that Ditech don't really apply, someone else did, because we're fine within the plan.

And here you asked me a few days ago during cross-examination to not get into conceptions of justice and fairness, but let's talk about a few things that are more directly relevant to the statute. Number one, Your Honor, is you've heard me say many times, I have never once ever defended Purdue's past conduct or the Sacklers. We arrived in March 2018.

But the facts are that it was not the Sacklers who

paid $75,000 to New York State; it was Purdue. And in Oklahoma, the Sacklers were note even sued; Purdue was sued. And Purdue paid to settle that for a variety of reasons and the Sacklers were not parties to the consent judgment and made a voluntary contribution of $75 million. Might those suits have expanded and were they thinking lots of complex things when they settled? They are not my clients and never have been, so I don't know and it's not my business.

But the facts are that there is no track record, I believe, which is part of what angers so many people, of the Sacklers actually having had judgments entered against them. I believe there are none.

Your Honor, the first point -- and I appreciate the references both to sophistry and to tautologies -- are simply not correct. In many cases, an individual member of the class is differently situated and has a third-party claim that many others might not have. They might be properly classified in the same class vis-à-vis the Debtors but have a unique opportunity to recover more than in a liquidation because they have third-party claims that could be pursued that the plan would take away.

And if those claims are not speculative and reasonably capable of estimation, which is the best possible law for Mr. Goldman's clients, then they have a real argument.

Here, it is absolutely appropriate to take judicial notice of 50 states, 48 states, 38 states that I will argue in more detail in a few minutes are, in fact, virtually identically situated, have made the same choice. So, in fact, it's neither a tautology nor is it sophistry.

Number two, Your Honor. We fully accept that it is our burden, but the Court has to consider everything including what the objectors bring as part of raising an objection and one page in a brief with no claims that they would actually do better and nothing to suggest it. Even now, no one has ever said I know a better way where creditors get more, I know a better way where victims get more redress. If someone thought that was really the case after $500 million in legal fees, maybe they should have just said it.

Your Honor, with respect to burden, let's talk about the facts in the record. The allocation chart among the states about what each one is getting goes to, like, nine decimal places. I'll read one example: Alabama, $1.6579015983 percent. The Debtors had no involvement in that. The states worked it out amongst themselves and decided how much each one was getting and then handed it to us and said please staple it to the documents and file it on the docket, which we did at No. 3232, Exhibit C, Schedule 3. Don't take it from me. Take it from them.

Then there's Mr. DelConte's testimony under oath in these proceedings that perhaps the objectors did not remember. We're all dancing faster than anyone should have to. So I quote, this is from the transcript on August 13th at Page 72, beginning at Line 9. The questioner was Mr. Kaminetzky. The witness under oath was Mr. DelConte.

"Q: And could you tell the Court why is it that you didn't account or put a value on those causes of action?" This is in response to the questions that he got about direct claims.

"A: We did not. We determined that we couldn't adequately estimate the value of those potential claims, you know, based on the fact that, as I testified before and as laid out in the disclosure statement, the fact that there's a number of different causes of action that various third parties could have against the shareholders, as well as a number of defenses that the shareholders could have against those particular causes of action and the fact that none of these causes of action had been taken to judgment to date. We didn't think that we were accurately able to estimate what the total value should be, so we determined that we should not include that in the liquidation analysis."

He testified under oath in a Federal Court that the claims were not estimable.

THE COURT: But he is not --

MR. HUEBNER: (crosstalk) requires --

THE COURT: He is not a lawyer, and Mr. Goldman's point is that he thinks you could have provided a lawyer who would testify as to why it would be speculative. What is your response to that?

MR. HUEBNER: Your Honor, apologies, Your Honor. I'm actually going to get to that with cites and more in a few moments if that's okay with you as part of the flow.

Your Honor, the next issue is that, you know, with all due respect, he actually ignored every single one of my 11 points, right, and it's basically now agreed, as the record makes clear, that the five to six to seven billion dollars of Debtor value is gone in a liquidation.

What he did was he said there's no evidence of what we get in a liquidation; that's false. In two of the three scenarios in the declaration, Class 4 creditors share zero. If Connecticut's percentage is 1.3490069542 of zero, it is still zero.

The third scenario, which is the only one where they would get anything, they share $699 million, compared to the five to six to eight billion dollars that states alone are sharing under the plan. I can't get anyone -- I couldn't get a bevy of supercomputers to testify what Connecticut would likely end up with out of $699 million. When all the intercreditor deals were voided, Mr. Shore

moved to subordinate their claims. We had $400 trillion -- trillion of projected non-state claims against their 2.156 trillion.

To say that I need a lawyer under oath to say nobody could possibly in the universe credit a material recovery that Connecticut in a liquidation I think is not what -- that's arguably sophistry. I mean, the facts are so clear, and they're not arguing to the contrary. They're just saying we don't have to prove anything. We think we've met our burden by miles.

And let me keep explaining why, Your Honor. Your Honor, we sort of covered this and, you know, it's not curious that there's no expert. There's no expert because it's so obvious and so unassailable that if everyone chases the Sacklers -- and everyone is everyone -- it's unknowable what any individual creditor gets.

Think about what Mr. Goldman had to argue. Oh, maybe many of the states won't sue the Sacklers. They'll just say, you know, even though we're going to get nothing from this case because the Debtors melted down, the company was destroyed, and we couldn't get that value and we lost PHI, we'll let our brother and sister states go through the Sacklers and we'll just stay home and wish them the very best while our citizens get zero, zero from the Sacklers, zero for abatement.

I mean, it's not -- it's just so far beyond the pale to have to respond to an assumption. I mean, I could ask Mr. Eckstein to speak after me and confirm that there's no state anywhere that's going to allow others to sue the Sacklers while they do nothing. They all have identical, similar, analogous, different causes of action. The only reason the Sacklers are named in some complaints and not others is because of the Chapter 11, which we'll discuss in a minute.

In fact, you know what? Let's discuss it right now, because it's just so not right that almost two years in, we're still hearing what is truly -- and I don't mean this unkindly -- a canard about the PI blocking information flow.

So let me remind everybody. The preliminary injunction was supported by the Official Committee of Unsecured Creditors on behalf of everybody as the statutory fiduciary appointed by the Department of Justice to vindicate all of Purdue's creditors as best they know how. They were supported by the AHC.

THE COURT: If I could interrupt. I think Mr. Goldman's point was not about -- he was not saying there was a lack of information about the Sacklers or claims that might be asserted against them.

I think what he was saying is that they -- certain

states at least would have gotten a judgment but for the injunction and, therefore, the claims could be -- the face amount of the claims could be treated as something that there is evidence on.

MR. HUEBNER: So, Your Honor, that's exactly where I was about to go.

THE COURT: Okay.

MR. HUEBNER: I was first noting, because people keep implying that the injunction was somehow put in place for the benefit of the Sacklers --

THE COURT: Well, I don't think Mr. Goldman was doing that.

MR. HUEBNER: -- and wanting to be farther --

THE COURT: I don't think he could because that's not -- he wasn't doing it and he couldn't have done it because it's not --

MR. HUEBNER: Correct.

THE COURT: -- the fact.

MR. HUEBNER: So now let me address the actual point.

THE COURT: Okay.

MR. HUEBNER: I agree, and it was both nothing and too much at the same time. As Your Honor might remember the state of Washington actually said when reading the injunction, please let just us proceed to trial because

we're very far along and we think it would be helpful.

You've never heard me ever dispute the strength or validity of any individual claimant's claim against the Sacklers. The problem is one creditor winning against the Sacklers only supports the likelihood that all creditors would win against the Sacklers, and if all creditors win against the Sacklers, no individual creditors' recovery is knowable. But what is knowable is that four, five, six, seven, eight billion dollars that is already on the table evaporates and creditors have to do better trying to share only what they get against the Sacklers in that scenario, and that's my argument.

You know, the notion of Mr. Goldman having to say, you know, only a small number of states might sue them, it's just so -- I don't even know what to say in response to that. We can line up 100,000 creditors right now at the podium to say I swear I will sue the Sacklers along with suing Purdue to recover for the acts of this company and its owners, and everyone on the planet knows it.

Your Honor, Mr. Gold then -- Mr. Goldman, I'm so sorry. Mr. Goldman then sort of testified and sort of speculated that in a subsequent Sackler bankruptcy, if that happened, we would all do better because maybe they go into Chapter 11 and maybe their trusts would be brought in and maybe they're not self-settled trusts and maybe we could get

all their assets.

Well, here's my answer to that. With all due respect to Mr. Goldman, who is in the 1/500th of 1 percent of our creditors who objected to confirmation, many of us have spent years figuring out how to get the best deal and analyzing the all risks and rewards.

And here's the testimony, which is in evidence, from Mr. Atkinson, whose declaration is extraordinarily important and attaches the UCC letter which went out to all creditors and is extraordinarily important. Paragraph 11:

"At the outset of these Chapter 11 cases, Akin and Province commenced an investigation on behalf of the Official Committee of among other things, the claims that could be asserted against the Sacklers and related entities on behalf of the Debtors' estates. This also included an investigation concerning the likelihood of success of any potential estate claims against the Sacklers and related entities, the likely damages associated with such claims, and the likelihood of collecting on any judgment rendered in favor of such claims."

Everyone looked at collectability. What does Mr. Goldman think we were all doing for the last three years? This is a huge part of what people were doing, people like the AHC and the UCC and the PIs and the special committee thought about all of these thing. So like an intellectual

colloquy about what might happen in a hypothetical Sackler bankruptcy which Jersey law and Connecticut and Maryland law, this is the work that was done for tens of thousands of hours and all the people suing Purdue and suing the Sacklers.

And nobody but this one objection apparently believes that there's a better alternative, and this objection doesn't really believe it either because you'll notice you never heard anybody say, and you certainly didn't hear Mr. Goldman say, I actually think my clients would do better. Nobody could say that, not under oath and not in a signed pleading.

I have tremendous respect for how seriously Mr. Goldman takes his signature, and unlike other pleadings in this case, there is nothing in his that an officer of the court should not be comfortable saying, but I think the silences are also important. And ironically, I think that you can take judicial notice of the silences as well.

Two final points, Your Honor. In case the record is somehow not clear, I have never ever said that any state would not prevail against the Sacklers. My point is different, and it has always been different, which is we're back to the tragedy of the commons, is that everybody would prevail. And we discussed this or there's a risk and the odds are the same for everybody.

And so, Connecticut on its $50.1 billion claim is likely to prevail. o are 47 or 48 or 42 other states and tens and tens of thousands of other Creditors who suffered similar injury.

Finally, it's not really relevant because I said it's Mr. Preis' argument and I'm not making it, but right is right. So let me be very clear. Purdue as you have heard in other context, often in very strong tones, pled guilty to multiple crimes in 2007 and had a corporate monitor in place that many of these states participated in the monitoring and had rights and access to information. Suffice it to say that if the Estate is forced to go in a different place and has to seek fairness in recoveries for all, Mr. Goldman's sort of testimony again about we're a BFP. We have no knowledge, we weren't on notice -- not my theory, not in my pleadings, but that's something that a lawyer can represent to a court and I daresay Mr. Goldman has no facts to support that some day some court might find about who might have been able to stop this years ago. I have nothing further.

THE COURT: Okay. All right. Why don't we move on then to the next topic on today's agenda which is the classification argument made by the objecting states other than West Virginia, which frankly, I'm not sure at this point, given the vote, matters that much, but it's on the agenda and I'll hear it briefly for the time that's been

allotted.

MR. MCCARTHY: Your Honor, for the record, Gerry McCarthy of Davis Polk on behalf of the Debtors. Can Your Honor hear me clearly?

THE COURT: Yes.

MR. MCCARTHY: So the next item on the agenda, as Your Honor just noted, which I now will address are the classification objections of Washington, Oregon, as well as Connecticut, Maryland, and the District of Columbia. I believe there were also some joinders by California, Delaware, Rhode Island and Vermont.

The objecting states contended the plan improperly classifies them with cities, municipalities and other local governments. That objection should be overruled for two basic reasons. First, and most importantly, the Debtor's classification framework is entirely proper. The objecting states arguing to the contrary is simply incorrect.

The Court, I know, is more than familiar with the straightforward rules governing classification, the first set forth in Section 1122(a) is that claims or interests may be classified together if they're "substantially similar." The second is that a Debtor has a great deal of flexibility to place similar claims into different classes and can do so as long as there is a legitimate reason for it, but doesn't have to. It's the first of these rules that disposes of the

issues here.

The claims of the states and municipalities are substantially similar, and thus are properly classified together. As to the initial matter, these claims are all unsecured and thus have an identical relationship to the property in the Debtors' Estate. That alone is sufficient to classify them together.

These claims also arise out of the Debtors' production, marketing, and sale of opioid medications. In other words, they arise from the same facts. And although there is no need whatsoever to get this granular, and there may so variation state to state, state and municipal claims also allege many similar theories to recover. For illustrative purposes, one could compare the complaints of Seattle and Washington State at JX79 and JX944 respectively. They both have a certain public nuisance claims under the same statute, Revised Code of Washington Chapter 7.48. They both assert consumer protection claims under the same statute, the Washington Consumer Protection Act.

Or one could compare the complaints of San Francisco and California at JX825 and JX947 respectively. They too both assert public nuisance claims under the same statutes, California Civil Code Sections 3479 and 3480, and the two both assert consumer protection claims under the same statutes.

In addition to the foregoing, the Class 4 claims were all recovering under and through NOAT, treatment that the states and local governments specifically negotiated for and that arose out of the Phase 1 mediation. It is not at all unusual in Chapter 11 cases that claims arising -- claims recovering under the same trust are classified together.

All in all, the states had no case that even purports to require, let alone actually holds that states must be classified from other creditors as a general matter because that case doesn't exist. To the contrary, multiple states invariably hold claims in sizeable Chapter 11 cases including for things like taxes and environmental matters and the Debtors invariably had discretion to classify states with other creditors.

Here, the states are classified with other non-federal government creditors which is entirely proper under the circumstances.

Second, Your Honor, as you mentioned at the onset, the states' objections are essentially moot. If the states were to be separately classified, the class would be an accepting class, overwhelmingly so any way you look at it.

Christine Pullo from Prime Clerk testified in Exhibit B of her declaration -- that's at Docket No. 3372 -- that of the 48 states that voted on the plan, 38 voted in

favor and 10 voted to reject. That's 79.17 percent of the states that voted to accept. The number stays basically the same if one equates the District of Columbia and other U.S. territories. In that case, Ms. Pullo testified 79.25 percent of the states voted to accept the plan. And that's Footnote 5 of Ms. Pullo's declaration.

If we were to count by population, one would reach approximately the same results as Washington concedes in Paragraph 67 of its objection and Connecticut concedes in Paragraph 63 of its. The states voting to reject the plan account for roughly 20 percent of the U.S. population. That's a number that doesn't really vary if you include the U.S. territories.

If one were to go by states on proof of claim, you would again reach the same result as Washington and Connecticut concede in those two paragraphs. And if we were to count by the percentage of allocations each state received from NOAT, one could reach approximately the same result too.

For all these reasons, Your Honor, the objecting states classification objection should be overruled. It shouldn't pass without mention that the objecting states evoke a number of irrelevant legal doctrines that they believe demonstrate that their claims are different in class from those of local governments. These certain notions of

state sovereignty and a so-called Dillon Rule. Suffice it to say that none of these doctrines in any way mandate separate classification here.

I will now turn the virtual podium over, unless Your Honor has any questions, to Mr. Maclay who represents the Multi-State Entity Group and who I understand will address some of the points that I just mentioned briefly.

THE COURT: Okay, that's fine, thank you.

MR. MACLAY: Thank you, Your Honor, Kevin Maclay for the Multi-State Governmental Entities Group. Cognizant of Your Honor comments, I will keep this argument brief.

Your Honor, despite the fact that local governments have strong claims that they've expended significant efforts in pursuing opioid defendants, including Purdue, despite the fact they have suffered substantial harm and despite the critical role that local governments play in abatement efforts, including under the proposed plan here, objecting states seek to challenge the plan's classifications of the non-criminal domestic governmental claims in Class 4.

Your Honor, just to make a very important overarching point, local governments are at the front lines of the opioid crisis. If you're in your local community and you call 911, Your Honor, whether it's because of the criminal emergency related to opioids or a medical emergency

related to opioids, the person who comes, Your Honor, is a local policeman, a local firefighter, a local county hospital member, et cetera.

It is the local governments who brought most of the claims against the Debtors prepetition as set forth in the Debtors' docketed filing at 718 earlier on this case and it is a clear fact, as has been noted by many of the cases cited to in our brief, that cities and counties and other local governmental entities have numerous claims including for increased healthcare costs, increased foster care costs, increased crime-related costs, info, and tax revenue. And a number of cases, such as the City of Surprise case, Your Honor, lay this out.

Secondly, Your Honor, it is surprisingly absent from any of the objections filed by the objecting states any mention of the Home Rule Doctrine. They mention Dillion's Rule which has been largely superseded as a point of matter by the nearly ubiquitous entry into the Home Rule Doctrine by almost every state and this is laid out quite cogently, Your Honor, in our brief in the dispatch of the City of New York versus Beretta Corp, which is the District Court for the Eastern District of New York.

For example, in that case, the court reasoned that precluding the City of New York from bringing a suit aimed at redressing the problem of gun-related violence would

interfere with its authority to promote the safety and well-being of its inhabitants. It is quite clear, Your Honor, that local governments have both the duty and the authority to pursue defendants of mass tort-related incidents including opioid defendants. And the record is replete with examples of that.

For example, Your Honor, if you were to look at Paragraph 20 of the MSGE Group reply is support of plan confirmation, we list a litany of cases demonstrating that local governments have standing to bring such claims and in Paragraph 16 to 19 and 21 to 24, we have another litany of cases demonstrating the survival of motions to dismiss by those same governmental entities.

It is also clear, Your Honor, that very recently in Tennessee, nine counties and eighteen cities and towns reached a tentative 35-million-dollar settlement with Endo Corporation, another opioid defendant, on July 22nd of 2021. And in three other state courts, Your Honor, California, New York, and West Virginia, county and city plaintiffs are either currently in trial or have recently concluded trial and are waiting verdicts seeking billions of dollars in damages.

And, of course, as the Debtor's counsel aptly noted, Your Honor, it is, of course, true that under the proposed plan, cities and counties are part of the abatement

efforts and a very important part of the abatement efforts set forth in the plan that we week confirmation of here today.

And, of course, one final point, Your Honor, the parens patriae argument made by the objecting states is overstated first of all, because parens patriae powers do belong to the various states and localities in their various circumstances as our brief pointed out. And secondly, the proprietary actions that all local governments can bring heavy overlap with such parens patriae actions as pointed out also in the authorities that we cited you to.

To make a long story short, Your Honor, there is no valid basis to argue the states must be classified separately from local government and the surprising suggestion in the states objections that local governments don't have valuable and important rights to pursue against opioid defendants is just incredibly shortsighted as well as misleading and just flatly wrong. And so for those reasons, Your Honor, we support the Debtors in this particular example of argument as well as overall with the plan. We restate Your Honor that local governments and states, in fact, are appropriately classified together in Class 4. Thank you.

THE COURT: Okay. Thanks. I think Mr. Gold is handling this for the objecting states, but I may be wrong.

MR. GOLD: Your Honor, you are correct, Matthew Gold, Kleinberg, Kaplan, Wolff and Cohen, representing Washington, Oregon and District of Columbia. Your Honor, can you hear me?

THE COURT: Yes.

MR. GOLD: Okay. Thank you. I will proceed. I will first note that this oral argument is based on coordination and cooperation with the Attorneys General Offices of Connecticut, Delaware, Maryland, Rhode Island, and Vermont and will be provided in a unified fashion as we've discussed before, Your Honor.

THE COURT: Right.

MR. GOLD: And, Your Honor, I, too, will be brief in my comments in this regard. First, I want to emphatically say that our argument is not meant -- and we don't believe it is -- in any way to be disrespecting to local governments and the first responders and anyone in that group. We have not been arguing that they do not have claims. We are not arguing that their claims do not, in certain respects, overlap with claims that are brought by the states.

But we are arguing is that the states, the totality of the claims brought by the states and the objecting states in particular, contain many significant areas that cannot be brought by the municipalities which

supports why the states should be classified separately.

For example, in Washington, only the state can seek as a remedy civil penalties with respect to violations. That is not something that can be brought by municipalities. Now particularly with respect to classification, I will first --

THE COURT: Have the states asserted a different priority based on that right?

MR. GOLD: No, Your Honor.

THE COURT: Okay.

MR. GOLD: I will first note that it is the Debtors' burden to prove that the classifications were proper. The Debtors have argued that the argued that the classification error can be fixed by going back to the voting results and preparing a count of what the results would have been had the states been in a separate class.

And frankly, Your Honor, I find this is amazing. The Debtors waited until after the votes had been cast to rearrange them into a better classification.

A classification error cannot be fixed through a hypothetical analysis of how the votes might have been arranged under a different classification. The Debtors certainly cite no cases to support this theory that classification can ex post facto be revised. The disclosure statement certainly did not disclose to the voters that

their claims might be rearranged into separate classes for purposes of determining how the plan would go.

And, Your Honor, as you, yourself, stated, show me an election where that was done. I'm not aware that that's how elections are handled in this country that the votes can be re-scrambled and realigned if they were not properly counted in the first place.

THE COURT: They are counted.

MR. GOLD: They are counted.

THE COURT: My statement was as to somehow assuming votes that weren't counted. But let me just cut to the chase. I just frankly do not understand this argument. The caselaw could not be clearer that the focus as far as 1122 of the Bankruptcy Code is concerned, which refers to substantially similar claims, goes to the right of the claimant against the assets of the estate. So you can, although you don't have to, classify claims based on breach of contract in the same class with claims based on tort because each of them is unsecured and has the same right against the debtor's assets, general unsecured claims. Is there any aspect of your argument that is consistent with that proposition?

MR. GOLD: Your Honor, I'm not disputing that the claims as treated in the plan are all general unsecured claims.

THE COURT: Okay. So I think you lose. So let's move on to the NOAT allocation.

MR. GOLD: I simply --

THE COURT: This is just a waste of time, Mr. Gold, and I don't understand frankly -- it's just -- I've read your brief. The only question I had is whether you had some sort of priority claim, which you told me you don't or your clients don't. There's been no attempt to designate any vote in the class as to, you know, being for a claim that is only held by a state, which would be the remedy under the brief's argument that only the states can assert certain types of claims as opposed to a classification argument since concededly there are general unsecured claims held by the other governmental entities. There's no contention of any vote manipulation here given -- and this is where the actual votes, I think, are relevant.

So this is just, this argument makes no sense.

MR. GOLD: Your Honor, I was simply responding to the argument that the Debtors' had just made and they made in their papers.

THE COURT: Well, okay.

MR. GOLD: I have one other response to the argument that the Debtors have made in their papers, Your Honor. I will be brief with respect to this as well.

THE COURT: All right.

MR. GOLD: It relates to feature that the claims were all accorded one dollar votes. We submit that the one dollar claim setup was preposterous on its face. There may well be cases where that is the right approach, but not in this case. While the amounts of the claims might not have been fixed, the one dollar setup lumped together claims that were known to be different and several orders of magnitude different in size. The Attorneys General of the states represent the entire state and are not simply the sum of the municipalities that are contained therein. And by arranging the class and one dollar votes for every party in it, the Debtors were setting up a structure where they knew that they would be able to prevail in the ultimate voting and in a way that was inconsistent with what they had to be aware were the significant differences in the sizes of the claims. We submit that it is improper in this case. I have nothing further to add, Your Honor, unless you have questions.

THE COURT: No, I don't. Thank you.

MR. GOLD: Thank you, Your Honor.

THE COURT: I don't know if the Debtors or the MSGE want to respond on the one dollar point?

MR. HUEBNER: Your Honor, I'll hit that one. The answer is very simple. The NOAT allocation and he actually answers a bunch of the sort of points that were made, the NOAT allocation was agreed to among all the states and

entities as their Class 4 shared distribution. The one dollar was agreed to basically by everybody to avoid what could have been an unthinkable 3018 process. No 3018 motions were ever filed. We've never heard from anybody ever in this case until this objection was filed. And these procedures, as Your Honor remembers, were worked out with the AHC, with the NCSG, and with the UCC and the disclosure statement and these mechanics were agreed to by no objection from either today's objectors or I believe anyone else that was unresolved. To say now that the one dollar thing justifies some sort of infirmity is totally inappropriate.

And one other very brief point, speaking of inappropriate, to recharacterize Mr. McCarthy's presentation or brief as the Debtors have conceded they made a mistake and now they're trying to fix it, is just misrepresenting to this Court, just ridiculous.

THE COURT: I don't need to hear on that point.

MR. HUEBNER: Thank you, Your Honor.

MR. MACLAY: Your Honor, Kevin Maclay for the MSGE Group. On the legal aspects of the one dollar claim, I would direct Your Honor to Page 16 of our confirmation brief and No. 27, where we go through a number cases that have held a one dollar -- in a mass tort case, a one dollar voting amount is appropriate. And I would just like to read to Your Honor the A.H. Robbins analysis, which was affirmed

by the Fourth Circuit: "Any attempt to evaluate each individual claim for purposes of voting on the debtors plan of reorganization would, as a practical matter, be an act of futility and would be so time consuming as to impose on many deserving claimants further intolerable delay not only to their detriment but to the detriment of the financial well-being of the estate as well."

And I think, Your Honor, that analysis totally applies here and clearly justifies the one dollar voting amount because to liquidate the various and complex interrelated claims of all of the claimants here would have been essentially an impossible undertaking and certainly the gain would not have been worth the gamble, Your Honor, as noted by A.H. Robin and a litany of other cases cited in our brief.

THE COURT: Okay. Very well. I guess to me, ultimately the fact that the class that the objecting states say that they would want to be in, which would be a class of states only, voted overwhelmingly in favor of the plan, suggests that they would want to fight it out with these other 38 states as to the amounts of their claims, which I don't think is what Mr. Gold was saying, which is that the local governments have smaller claims. I actually think it is a nonmaterial amendment to a plan to allow a plan to be amended to reclassify in a class if one believed that the

class needed to be reclassified.

So I guess, to me, this seems to be unlike some of the other arguments that the objecting states have made, just an attempt to throw sand in the gears without any real merit to it whatsoever.

So why don't we move onto the next topic, which is the NOAT allocation issue raised as the only basis for West Virginia's objection to the plan and I think here, counsel for the Ad Hoc Committee of States and other Governmental Entities will argue in support of the plan and then we'll hear from West Virginia's counsel in support of the objection.

MR. WAGNER: Thank you, Your Honor. Can you see and hear me? It's Jonathan Wagner from Kramer Levin on behalf of the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants.

THE COURT: Yes, I can.

MR. WAGNER: Before I start, I just want to thank my Kramer Levin colleagues who have worked on this matter.

Your Honor, there are difficult questions that you need to answer in this hearing, but allocation is not one of them. And while we take the objection every seriously, it's not really a close question. The context is very important. We have 49 states on one side and 1 on the other. And when does the majority of the states in this country agree on

anything?

Here, you have 49 states who agree, or at least didn't object -- I don't want to overstate it -- and only one has disagreed. In fact, 49 --

THE COURT: I actually think it's 47 to 1, but that's okay.

MR. WAGNER: I won't round up to 49, but it's 1 on the other side and if the plan is so grossly unfair, why is it that only one state is objecting? These numbers alone could be used to justify compliance with the code, but even if you put aside those numbers and address the objections on its merits, it's clear that this plan satisfies the code. And as Mr. Huebner noted, no plan is perfect, but this one is pretty good. It's also fair to West Virginia.

As we heard during the testimony, West Virginia has about half a percent of the nation's population, but is getting more than twice that under the plan. And the reason is because the plan takes into account the intensity and severity measures that have been advocated by West Virginia itself. It just doesn't take them into account at the same extent.

Now Your Honor has to decide this issue based on a record that's before you and I don't know what Attorney General Morrisey is going to raise, but in this case, we have two witnesses, one was John Guard from the Florida

Attorney General's Office who was a very credible witness, and on the other side, we had Dr. Cowan who was the only witness offered by West Virginia and his testimony was full of admissions and contradictions. And his admissions on fairness and the reasonable nature of the plan and good faith are prone to objection.

Let me bring up the specific objection. The first is that the plan was not proposed in good faith in violation of Section 1129(a)(3). Under 1129(a)(3), a plan has to be proposed with honestly and good intentions. That's the Chassix case, 533 B.R. 64 at 74. To get in on one side, we had John Guard's testimony and his declaration. And Dr. Cowan's testimony to the contrary just does not overcome that testimony.

Mr. Guard was extremely credible and as Your Honor will recall, there was no significant cross-examination of him. He testified to years of negotiations and compromises back and forth. That was at Paragraph 10 to 47 of his declaration, and the testimony on Day 2, Pages 95, 105-106, and 118.

Now, could it really be that an allocation plan that was negotiated by all of the country's Attorneys General was negotiated in bad faith, that there was some national conspiracy among the top legal officers of the various states? Just to state that proposition shows how

farfetched it is. These are negotiations that had to balance the interests of fifty different states. And nobody ganged up on West Virginia.

Now the two -- there were two specific complaints raised by West Virginia under 1129(a)(3). The first is that the plan is a political compromise. As Your Honor is well aware, compromise is de rigueur in bankruptcy and is, in fact, favored. Compromise is not a dirty word.

A second specific objection is that the large states somehow took control of this process. This is not consistent with the outcome here. The small states, including West Virginia, do very well under this plan, and, Your Honor, should ask what proof has been offered here that the large states seized the process. There's been no fact witness offered by West Virginia, and on top of this we have the admission by Dr. Cowan, that the plan, that reasonable people may differ. That's at page 230 of the fourth day of the hearing.

Another (indiscernible) issue of good faith, Your Honor, is whether the plan achieves the result that's consistent with the Bankruptcy Code. That's the Chassix case at 533 B.R. 74, and as -- my -- the others who have made presentations before have noted, this is a plan that -- that confers substantial value on many different creditor groups, and it not only delivers value to creditors, I think

it's fair to say it's a plan that's in the national interests. It's a plan that literally saves lives, and how often can -- how often can somebody say that about a bankruptcy plan?

On this score that (indiscernible) that the statements pre-litigation by Dr. Cowan, I think, are very relevant, "spending more now in an effective way, though, will reduce damages". That's Exhibit 389 at Page 12, and as he also admitted, all the plans here are effective, at the pages 241 to 242 of his testimony. So how could a plan that's in the national interest somehow be bad faith? That -- is that an objection raised by West Virginia is that it is one of equal treatment under 1123(a)(4) of the plan, of the code.

Now here, all the states are subject to the same criteria, the treatment is identical, and under the W.R. Grace case, "what matters is not the claimants recover the same amount, but they have an equal opportunity to recover on their claims". That's W.R. Grace 729 f.3rd after Page 327. Since all the states are treated equally, you could argue that the proper standard is Rule 9019, and here the settlement clearly falls above the lowest point in raise of -- in range of reasonableness.

There's no argument to the contrary and Dr. Cowan's admissions that the plan -- that the plan is

reasonable really ends the matter, and I'd also note his admission that he prefers the bankruptcy plan to no plan. That's at Page 242 to 243 of the fourth day of the hearing. But even if Rule 9019 is not the standard, and you simply apply 1123(a)(4), the objection still fails. West Virginia has characterized this objection as -- as follows, "same treatment does not mean identical treatment, and courts have approved settlements where the class members received different percentages of recovery to take into account different factors. So long as the settlement terms of fashionably based on legitimate considerations." That's the West Virginia objection at Paragraph 28, citing cases.

The objection that West Virginia raised is -- is that the plan places too much emphasis on population, however, we have Dr. Cowan's statement, prelitigation, that "large communities likely should receive more than small communities". That's Exhibit 380 -- 388 at Page 6. In any event, West Virginia overstates the importance of population under this plan.

Just to go into a little bit of math, population is 31 percent of 80 -- of the first 85 percent and the balance is intensity measures, and then you have the remaining 15 percent that's all intensity measures and you all have the -- you also have the 1 percent intensity fund, and for all of those reasons, that's why West Virginia,

which has about a half a percent of the population, is getting more -- is getting 1.16 percent of the funds.

But, Your Honor, may legitimately ask why (indiscernible) the population at all? It's not at a political -- or it's not a political criteria. It's a rational criteria. It's not like throwing darts against the wall. Mr. Guard testified that there are issues concerning the intensity and severity measures, which make them subjective in some sense, and population is an objective measure. And I'd refer the Court to Mr. Guard's testimony at Pages 90 to 91 of the second day of the hearing, where he noted issues concerning under reporting as to those severity and intensity measures, inconsistencies among the states in reporting cause of death; and he said at Page 91, "population was added to try to deal with the issues that existed for the other metrics", and -- and he went on to say, "population was and is a typical metric that is utilized in State Attorney General settlements", again, Page 91. And we cited in our -- in our response a couple of -- a couple of among many instances in which national settlements used population as the only factor. In Recompact Disc, 216 F.R.D. 197 at 200, in re Toys-R-Us antitrust litigation 191 F.R.D. 347 at Page 350, and significantly, Dr. Cowan admitted that this settlement is a lot more fair than other national settlements, including the national tobacco

settlement. That's at Page 2 -- (indiscernible).

Just a minute on California, I don't know whether Attorney General Morris is going to raise that issue. It's a minor point, whether they contribute to the intensity fund. But during cross-examination, it was established that had the plan used expenditures on criminal justice as a factor, as Dr. Cowan did in his prelitigation hypotheticals, then California would have been far better than the 9.9 percent it gets under this plan.

The one final point, Dr. Cowan's plan, it's legally irrelevant under NII Holdings 536 B.R. at 125, but even if you plan more than (indiscernible) it doesn't really advance the objection. And when an expert changes his opinion so dramatically, as I think Dr. Cowan did from prelitigation to post-litigation, really has no credibility. And he admitted during his -- during the cross that his post-litigation plan is not remote -- does not remotely resemble his pre-litigation plan. And then also, he admitted before litigation -- he admitted before litigation that "there is no simple answer to the question how to allocate one large settlement -- one large opioid settlement. Too many questions remain. Too many issues need to be resolved." That's Exhibit 388 at Page 14. He had admitted that what's fair under these circumstances is complicated. That's Pages 233 to 234.

He said that spending more money won't necessarily get you better results. That's Exhibit (indiscernible) at Page (indiscernible). He said, "treatment in terms of offerings may not translate into increased efficacy", and just -- "just spending more to achieve equality may not be the best outcome". That's Exhibit 392 at Page 12. And then also, his plan produces very odd results. Washington, which has one fourth the population of Texas gets more than Texas. Kentucky, one fourth the population of New York, gets more than New York. Virginia, with a growing population, four times the population of West Virginia, which is loosing population, gets less than West Virginia. And Your Honor, the point of that exercise was to understand the point that if you change this plan to make it more fair to one state, for example, West Virginia, you have problems elsewhere in the plan. But I think it underscores how difficult it was to reach a compromise here, a balance, and I think all of that allows, Your Honor, discretion to (indiscernible) allocation under this plan.

To sum up, Your Honor, allocation under this plan is based on rational and legitimate considerations. It's actually quite an achievement. It confers the benefit on the States and on the Nation as a whole. And I have to say no good deed goes unpunished because West Virginia, does pretty well under this plan, and West Virginia's criticism

really fail on their own terms, but certainly in the large context of this case. And the larger context is as the West Virginia expert, himself noted, the more time that this problem festers without additional spending on opioid abatement, the worse the problem will become. And that's probably why the West Virginia expert admitted that he prefers the current plan to no plan. And for all those reasons, Your Honor, the Court should reject the objection. Thank you.

THE COURT: Okay. Thanks. So again, Counsel for West Virginia, Mr. Morrisey, I think is going to handle the argument in support of the objection.

MR. MORRISEY: Your Honor, this is Attorney General, Patrick Morrisey, and I'm grateful for the opportunity to appear before you today. I would mention, at the outset, that the issue of the opioid epidemic is quite severe in our state, and regardless of all of the issues that you're hearing about, I think one area that we can find in common with virtually every party, is everyone would mention that West Virginia was ground zero at the opioid epidemic. If you looked at many of the metrics, West Virginia had the most horrific of experience with the level of intensity and severity that I think virtually all counsel would concede.

The reason I'm very appreciative to be before you

today is because this decision represents the first of likely many in a series of court cases which will determine how abatement is going to occur in the country, and I recognize that many of the states spent many years and they worked on it. But just because many states agree on a flawed formula doesn't make it correct. And so we are asking the Court to look at the grave issues associated with this particular case in having the predominant population based model, contrary to Counsel's argument that it's 31 percent population, effectively, a vast majority of this formula is based upon population. It's not based on severity. In fact, the one severity measure that everyone can point to is the 1 percent fund that's been discussed a lot.

If you actually looked very carefully at what the principle public health agency of the country, whose task was charged with looking at these issues comes up with, they've indicated that intensity should represent 15 percent of the overall formula. The difference between 1 percent and 15 percent is obviously very stark. Now Counsel --

THE COURT: Can I just say that --

MR. MORRISEY: -- indicated --

THE COURT: -- let me just interrupt you --

MR. MORRISEY: Sure.

THE COURT: -- Mr. Morrisey, that -- you're --

you're referring to the, it's an acronym, it's S A -- S H -- I'm not trying to letter --

MR. MORRISEY: SAMHSA?

THE COURT: SAMSA, but it's SAMHSA?

MR. MORRISEY: SAMHSA -- I think it's Substance Abuse Mental Health Services Administration.

THE COURT: And -- and as I understand it, that has changed -- that comes out once a year or every other year and it is changed from time to time?

MR. MORRISEY: It has changed. I know that the most recent formula that we've looked at, they have an intensity fund applying to ten states that then would be able to claim up to 15 percent of the aggregate dollars that Congress appropriates.

THE COURT: Okay.

MR. MORRISEY: So if we step back to Counsel's arguments that this plan was made in good intention, I think that that statement could be torn apart fairly quickly. Let's start with something that Counsel indicates is a very small issue, and you can make an argument about whether 1 percent of the aggregate funds going to a particular state is small or large, but when you're talking about the largest state in the country for all the states to come together behind, what I would call, the California carveout or cash grab, you're talking about a significant amount of money.

Not only with respect to the amount with this Purdue bankruptcy, but all those in the future. And so, that 1 percent is not indicative of good intentions.

How could every state contribute to a particular intensity fund showing that at least on a minimal basis, all states believe that intensity's important and one state be afforded the opportunity, due to political consideration, to argue well, we shouldn't have that in there.

Your Honor, the arguments we bring before you today, we think are straight forward and don't contain some of the same controversy that you had on Monday, or you've had throughout. These issues that we'll bring in with respect to No. 1, trying to eliminate the California carve out. That's straight forward. That could be easily adjusted because there's no rational basis, whatsoever, no legitimate consideration that one state should ignore intensity considerations. I would defy Counsel to come up with one good reason. They cite an 18 percent issue with respect to judicial enforcement and other matters, but nothing in the record indicates that that's even tied directly to opioids.

There are many reasons why a state ultimately might have more resource needs with respect to law enforcement and other areas. But everyone that's gone through this process would acknowledge that the California

piece is one of the blites on this deal that needs to be changed, because once again, it's not good faith to allow one state to not contribute to a fund that every other state does.

The second piece, which I think is equally powerful, is that most of this formula is once again based upon population. Counsel cites 31 percent, but if you look closely at the formula when you're looking at morphine equivalents, when you're looking at several other factors, it's clear that we're effectively quadrupling the population count, and Counsel and our expert witness, Chuck Cowan, testified to that fact without any contravention.

That's something that's not rational when you're trying to solve a problem. It -- Counsel states that this is consistent with many other matters that get settled by the state, but frequently, when states are involved in a consumer or an antitrust matter, there could be discouragement and there could be something focused on a population. This particular issue deals with the disease state of individuals and what's happening within specific communities.

So to be able to say there should be a population based formula to solve the problem, rational economic theory would never suggest that you're going to go in and say how many people live in a state? That's how we're going to deal

with the opioid epidemic? It's an embarrassment and an affront to any attempt to have good faith when the focus is so much on population. And of course, there were rigorous discussions about this for years. I recognize that many of my colleagues ultimately decided to move in a different direction, but the importance for this Court, for this precedent, to get it correct, to do two things; eliminating that California carve out, and two, asking to go back and to either: a) change the population based system and move it more to an intensity system, or b) simply taking an easier tactic, which would be to move from 1 percent of intensity fund to 2 percent or 3 percent, which I would note is very different than what SAMHSA recommends, at 15 percent. That would create a much different abatement structure, which is going to allow money to flow to the communities that actually need it most. And I think that's what we're all here to do, to make sure that money gets out quickly. That's why we've tried to work collaboratively with the states, and we haven't objected to other provisions, but we see this as a fatal flaw of the agreement.

But, Your Honor, you have the ability to help change that and to convince the parties that a California cash grab, or carve out, is inappropriate. It should make America very, very upset, and separately, the intensity fund is still inadequate, given the fact that when you solve a

problem, you look at healthcare capacity. You look at the structure or what's being done to deliver healthcare within a particular community. You look at the opioid deaths and you look at the people that are not treated, currently. Based upon all of those factors, it's clear that West Virginia is a unicorn, so it's not surprising that we would get voted out on a particular issue like this because our numbers are so bad, compared to every other state.

We're asking the Court to help bring that good faith back to the process by making those two modest considerations: 1) eliminate that carve out, and 2) increase the size of the intensity fund so that many years from now, we're not going to go back and look at this like we all looked at tobacco, that the moneys were actually not put in adequately to solve the problem. That is just ended up being a political grab bag. That's what we should all oppose.

This is a court of law where everyone expects to get the best treatment under a quality of law. It's not Congress, it shouldn't be compared to that where they make political deals all the time. We have a chance to actually focus on solving the problem, the right way, in a manner that this allocation formula does not.

Your Honor, I'm very grateful for the opportunity to personally come before you today. This is the number one

issue facing our state, and I wanted to amplify how important it is that we fix this because what this Court decides to do is likely to serve as a president going forward for all the other litigation that we have against manufacturers and pharmacies. And what we've found through all the years, West Virginia's been out in front, leading on this issues, is that we have to focus on intensity and severity. And this allocation formula does not do that, and the record makes that clear.

THE COURT: Okay. Thank you.

MR. WAGNER: This issue has to be decided on the record and there's a -- there's a record before your Honor. I don't think I need to dwell on it any longer. Second, Mr. Guard, I think testified eloquently why population is not some random (indiscernible). It covers some of the subjective problems with the other factors; and third and for this, I'm going to have to defer to my bankruptcy colleagues, but as I understand it, Your Honor, doesn't get to redline this part of the plan. It's either plan or no plan, and it's significant that Dr. Cowan, when he was asked plan or no plan, he said he prefers the plan. Thank you.

THE COURT: Well, don't go away yet, Mr. Wagner. I -- I agree, the record is pretty -- is not pretty, it's well developed on this issue, with one possible exception, which is why California, of all states isn't contributing to

the 1 percent small state fund. I understand there was testimony that California has the highest, I believe there was testimony, I'll have to go back and look at it. Either has the highest or a significant amount of criminal justice expense. But and I appreciate your, and Mr. Guard was (indiscernible) limited in what could be discussed about the party's negotiations, particularly given the sensitive nature of individual states negotiations. But I -- I -- again, I'm dealing with a specific statute, which is 1123(a)(4), which says that a plan shall provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to less favorable treatment. And I understand that you said that this proposal, just like the State of West Virginia's proposal, isn't a straight or simple pro-rata treatment, it's a formula that has adjustments to it to take into account various different states or groups of states interests. But they all seem to have acted as a group, except on this one point, where only California is carved out, unless I'm missing something.

MR. WAGNER: No it's only -- it's only California. So a couple of points. First, the class -- first of all the class has voted for this. Everyone else has gone along with it --

THE COURT: No, but that's --

MR. WAGNER: -- second of all --

THE COURT: -- that's not -- but that's not -- 1123(a)(4) applies notwithstanding the class vote, if there's an objector, like West Virginia, then they can raise 1123(a)(4).

MR. WAGNER: Well, look, I -- I can't speak to California's motivation, but this is not -- it's not a big issue. It's a contribution to 1 percent, and California does have an argument, as I noted during the cross of Dr. Cowan, that had a different set of factors been used --

THE COURT: I understand that, but again, the statute I'm dealing with is provide the same treatment for each claim. Now here, I get it, it's in the context of a heavily negotiated settlement among the states, the 48 states that are participating in this plan. The other two having settled with Purdue, pre-bankruptcy. So I think to some extent, one looks at the fairness of the overall settlement as opposed to the same treatment, and that's corroborated by the fact that the -- Mr. Cowan's proposal is depends on different factors too, it's not the same, you know, it's not just a prorata under one measure for -- for any state.

But it -- it is -- unless there's a really good explanation for it, it is somewhat anomalous that California, alone, is not contributing to the small state

fund. Unless I'm missing something.

MR. WAGNER: Well, again --

THE COURT: I mean, I think, I mean, maybe I'm putting words in Mr. Morrisey's mouth, but if it's not that big a contribution, why doesn't California just agree to it?

MR. WAGNER: Again, I can't speak to California's motivation, but I would say it's in the general context of the plan. It's not -- it's not material.

THE COURT: Well --

MR. WAGNER: The contribution --

THE COURT: -- but -- I -- (indiscernible) I don't know. I don't -- I think that argues both ways, frankly. All right.

MR. WAGNER: I -- yeah, I take, Your Honor's point.

MR. MORRISEY: Your Honor --

THE COURT: I mean, I -- I -- the reason I've had -- and I'm sorry to interrupt you, Mr. Morrisey, the reason I'm asking this is you do have a very good record here, Mr. Wagner, generally. But all I have, I think on the California piece, unless I'm missing some piece of it, is that one can argue that if you took law enforcement as an allocation factor and Mr. Cowan, did testify that that could be taken as an allocation factor, California would actually be getting a lot more. What I don't have is whether that's

any different than all the other 47 states or whether they're just saying my way or the highway. Even though they really aren't that different than the other 47. But maybe there's something in the record that suggests that they are unique, or that of the states contributing to the 1 percent fund, they have a highly disproportionate amount of law enforcement activity, particularly related to opioids.

MR. WAGNER: Well, again, I think -- again, I think the (indiscernible) of California could have argued otherwise, and this was a -- this was (indiscernible) and a compromise among the states, and they've all gone -- they've all gone along with it, including others similarly situated (indiscernible) West Virginia, but I take, Your Honor's point.

THE COURT: Okay. Well, I hate to --

MR. MORRISEY: Your Honor --

THE COURT: -- I hate to -- if I could just get this out, Mr. Morrisey. I hate to suggest more issues for people to negotiate over in the next couple of days, but this may be one that the states may want to discuss with the State of California. I -- I under -- I think I do understand both sides arguments on this point. But I'll hear Mr. Morrisey on it.

MR. MORRISEY: Your Honor, I would address the materiality issue that in light of the sums of money that

are involved, when you're talking about 1 percent of a state's share, if you look at $10 billion, hypothetically, that's $100 million.

THE COURT: No I -- that's --

MR. MORRISEY: And so it --

THE COURT: -- I agree.

MR. MORRISEY: -- from a West Virginia perspective, when you're talking about a small intensity fund, we could be talking millions of dollars, and so that's the first piece. So it is material, and second, once again, we would point out that the record is very clear, that John Guard testified that California said this was good enough, and that they weren't going to give any more, but once again that doesn't meet a good faith standard, and that's why we've always asked, at a minimum, not only to increase the intensity fund but this is a blight on the deal, and it doesn't meet any rational considerations. It's not based on a legitimate consideration.

THE COURT: Well, I -- I do -- I would put a qualification on what you just said, sir, which is I don't think this is a good faith issue. I think it's really a same treatment issue and I -- I have a hard time seeing one state, whether it be West Virginia on one side or California on the other, having a unique treatment that other hadn't negotiated, you know, for some very good reason, and I'm not

sure I see one here. But I'll have to -- I'll have to consider this carefully.

MR. WAGNER: And just one more point about the math, if the intensity fund is 1 percent, 1 percent of 40 -- $4.5 billion, if my lawyer math is right, is $45 -- $45 million, the West Virginia --

THE COURT: I -- but look, it's the, you know, it's the (indiscernible) Webster's line it's a small school, but there are those that love it, you know, money's money here. It's important.

MR. WAGNER: The West Virginia share of that is $450,000.

THE COURT: Well, that -- that can help -- that can help someone in West Virginia.

MR. HUEBNER: But Your Honor, one very small point from the Debtors, if the states are able to work this out amongst themselves in connection with the Court's, I think, pretty strong direction, we think that'll be fabulous. If the Court, nonetheless, felt in the absence of such an agreement, that the Court was essentially going to direct it, this is not the debtor's fight, but we would certainly not have no objection to that as the plan proponent it is our plan that would be changed. I think that the Debtor's view has at least some small relevance and we would not object.

THE COURT: Okay. Thank you.

MR. ECKSTEIN: Your Honor, I would just make one point. This is Kenneth Eckstein. I do want to point out -- and I hear Your Honor's suggestion, and I think we would obviously love to have that consensus achieved. I do want to point out that California remains an (indiscernible) state and I don't --

THE COURT: I understand.

MR. ECKSTEIN: -- hold out the likelihood that we're going to be able to resolve this specific issue with a state still objecting to the plan. So from a resolution standpoint, I don't want to give the wrong impression, Your Honor, about what's (indiscernible).

THE COURT: That's fair. I just -- I want -- I think -- and I don't know whether specific counsel from California is listening, although they've joined in. California's joined in the Oregon and Washington objection and others. It's -- look, I'm just pointing out my concern about this issue. That's all.

MR. ECKSTEIN: And we do understand, Your Honor. And obviously, the states worked as hard as they possibly could to bring the broadest possible consensus.

THE COURT: Well, that's clear.

MR. ECKSTEIN: There is this --

THE COURT: I -- look, that is clear to me. That

is clear to me, but nevertheless, I have to apply 1123(a)(4).

MR. ECKSTEIN: I believe, Your Honor, that you can, and I believe that there is equal treatment. But you're correct that that equal treatment includes an exception, in a sense, for one state that would've argued for more. They believe they were entitled to more --

THE COURT: I agree.

MR. ECKSTEIN: -- than they're getting, and this is where the settlement came to rest. Can it be improved? Like all settlements, yes, but I just --

THE COURT: Well, that's --

MR. ECKSTEIN: -- want to suggest, Your Honor, that this one may be difficult for us to change. And I don't --

THE COURT: That's fair --

MR. ECKSTEIN: -- want Your Honor frustrated by the inability to make that movement right now.

THE COURT: Okay. Very well.

MR. ECKSTEIN: Thank you.

THE COURT: All right. Thank you both counsel on that issue. So I think we are next, on the topic list, for the objection by the Canadian municipalities and First People's listed in Mr. Underwood's objection. And again, this is to cover points other than the third-party release

point, except for one sort of overarching jurisdictional point that Mr. Underwood wanted to discuss I think, which is sovereign immunity or foreign sovereign immunity. So the Debtors have reserved a very brief time for their remarks, and then I'll hear from Mr. Underwood. And then they have some time for rebuttal.

MR. TOBAK: Thank you, Your Honor.

MR. UNDERWOOD: Your Honor, Allen --

MR. TOBAK: Oh.

MR. UNDERWOOD: Go ahead.

MR. TOBAK: Anyway, this is Mark TOBAK, Davis Polk for the Debtors. The Debtors' response to the Canadian objector's objection is set forth in full in our brief, and there's no need to repeat it here. It appears that over the course of the hearing, Mr. Underwood's argument may have evolved since the filing of our reply brief. So the Debtors do reserve their time for rebuttal.

THE COURT: Okay. So --

MR. UNDERWOOD: Thank you.

THE COURT: -- Mr. Underwood, you can go ahead.

MR. UNDERWOOD: Thank you, Your Honor. Allen Underwood on behalf of -- Allen Underwood with the firm of Lite Depalma Greenberg and Afanador on behalf of certain Canadian municipal creditors and Canadian First Nations creditors. I think the way that we have always viewed this

proposed plan (indiscernible) and it's a (indiscernible) short period of time that it may be leading this Court to error. In particular, irregardless of any of the other arguments made by other creditors, that may be leading this Court to errors particularly with regard to the Canadian Municipalities and First Nations.

Technically, the Sacklers (indiscernible) vast wealth beyond the jurisdiction of this U.S. court, and that wealth was largely derived from the U.S. enterprise that is actually before this Court. In so doing, and unfortunately at least as this plan is drafted, the Sacklers have made themselves in their trust something along the effect of -- and it's not (indiscernible) themselves. And in effect, in the manner in which they're contributing assets to the plan, they are not -- they're not bowing to this Court. Rather, they're seeking to direct it.

THE COURT: Mr. Underwood, this is --

MR. UNDERWOOD: In essence --

THE COURT: -- really far afield from, not only your objection, but also from what I just said, which is that you had your chance to argue about third-party release already. I -- it's also, I think, just not -- I'm not quite sure where you're going on this. They actually are submitting to the Court's jurisdiction to perform the settlement, including the injunctive provisions of the

settlement. So --

MR. UNDERWOOD: I --

THE COURT: And as far as the -- your clients, whether the Court would have jurisdiction over your clients, they've all filed claims in this case. They're looking to recover --

MR. UNDERWOOD: That correct.

THE COURT: -- money in this case.

MR. UNDERWOOD: That's correct, Your Honor. And where I was going from the outset was this notion, effectively, that the Sacklers cast a dark pale over this entire settlement by suggesting that -- there's a pinhole that they suggest that they would walk away from this plan in the event that these releases are not approved. And I don't know whether that's true or not.

But what they've done is to -- effectively, this Court is administering non-Debtor assets in Canada by way of the IACs and the rights of the Canadian Claimants in Canada to bring claims against the Sacklers. And I think that jurisdictionally in the first instance here, that's a bit of a problem.

Now I'll go to Section 106, and I guess the related issue, which is the way that this plan was structured, if you were an international creditor, you were given the devil's choice of filing a claim and affirmatively

participating in this process or not filing a claim and seeing how it played out. And I guess reserving your rights to pursue assets elsewhere.

The problem is that this Court -- because of the fact that the overall resolution here is actually administering non-Debtor assets in such a vast manner, that it's a bit unfair, generally, I think, to hold the Canadian Creditors to the kind of global Section 106 waiver that the Debtors would suggest. And the Debtors cite no case law about the scope of 106. And I think in principle, my understanding of what Section 106 is, is it's a defensive provision effectively to make sure that there are counter-claims under the Bankruptcy Code that can be brought so that if a sovereign submits to this Court an affirmative claim, there can be counterclaims.

Now, in this case, there's been no allegation of any form of Debtor claim, counterclaim, avoidance action claim against Canada. All Canada's set to do by participating is preserving its rights. And in fact, obviously the Canadian Municipal Creditors are glad they participated because, frankly, assets in Canada are being directed under the plan confirmed here to U.S. trusts, and those are U.S. trusts, which the Canadian Municipal Creditors and First Nations are not -- they're not beneficiaries.

And this is really because of the manner in which the Debtor has structured this plan. And when I say that, I -- we would have no argument here today had the Debtor effectively put the Canadian Municipal and First Nation Creditors in Classes 4 and 5 under the plan. And in fact, actually, factually, that's exactly what my clients thought up until -- and the Debtor admits this -- up until virtually a week before the plan objection on the sixth amended plan was due, at which point the Canadians were advised, well, despite the fact that you received ballots in Classes 4 and 5, you're actually going to be treated in Class 11C.

And it was at that point that the Canadian Municipalities and First Nations realized that merely filing a claim in this case was not going to be enough to preserve their rights before this Court, and that they would have to take the actions they have taken since that point. But bear in mind, Your Honor, that was a point 30 days ago. I think there was a presumption on the part of the Canadians that by filing a claim, their claim would get -- again, in same manner and fashion, and fairly with respect to other similarly situated claims.

Now, the Debtor clearly will make a distinction between the Canadian Municipal claims and Canadian First Nation claim, and the municipality claims, the State claims, the City claims that are filed by the United States

entities. And they make that distinction by a nebulous reference to how different those claims are. They've never actually factually driven down why is a Canadian state different -- or excuse me, a Canadian municipality different from a U.S. municipality.

I would assert that the main difference is that there was a coalition of U.S. states and later municipalities that understood that they were -- and did press in their own direction to establish the classes under the plan, and that that was something that the Canadians presumed that ultimately they would be brought into. And they waited patiently, and ultimately, that never happened.

THE COURT: Well --

MR. UNDERWOOD: And that, again, is why we're here.

THE COURT: -- the objection itself acknowledges that the plan says what it says, which is that --

MR. UNDERWOOD: Right.

THE COURT: -- they're in the -- that the class that would receive the governmental entities and the class that would receive Native American tribes that would receive distributions for abatement purposes through the trust would be U.S. governmental entities and tribes governed by U.S. law. I mean, that's -- that is clear in the plan, and it's acknowledged. So I think the issue here, the legal issue,

is not that your clients have a right to be in that -- in one of those two classes depending on whether they're a First Nations Creditor or a Canadian Municipal Creditor, but whether their treatment in the Class 11 is somehow improper. Now, Class 11 --

MR. UNDERWOOD: And --

THE COURT: -- Class 11 voted for the plan, right?

MR. UNDERWOOD: It --

THE COURT: In favor of the plan.

MR. UNDERWOOD: Interestingly enough, Your Honor, I think if you look at the voting tabulation for Class 11C, and we did examine (indiscernible) tabulation, the tabulation -- had the Canadian Creditors been able to (indiscernible) dollar claim, the tabulation would have been -- I think in terms of numerosity, the majority of creditors in 11C, no matter how you slice it, would have voted in favor of 11C.

But in terms of overall value, but for the dollar value restriction, if you attribute any reasonable value to the Canadian First Nations claims in terms of dollar value, that class would've voted against the plan. And I don't --

THE COURT: But those claims are unliquidated. And the Debtors, I think, are correct. Having received the proofs of claim myself, it's very hard to see from the claims whether they're against the Debtors or against Perdue

Canada or one of the Canadian entities. So there's been no motion to estimate. I don't know why you don't count the dollar amount.

MR. UNDERWOOD: And I don't want to waste a lot of the Court's time on that subject. I think what we really come down to is the Debtor hasn't presented anything to suggest these Canadian municipalities and First Nations are any different than tribes or cities in the U.S. Now what does that mean --

THE COURT: But I would push back on that too. They do say that there's a substantial issue, which again, I could not get to the bottom of in looking at the proofs of claim and the complaints attached to, as to whether these claims are against Perdue Canada or against the Debtors. And it's only to the extent they're against the Debtors that they would even have a right to recover.

And of course, if they're against Perdue Canada, they're not covered by the injunction under the plan. And on top of that, and we just spent about 40 minutes on this issue, it's quite clear to me that as far as the allocation under the plan is concerned on the public side, the governmental entities side, it's pretty much a minor miracle, but it did happen that those public entities were able to agree on an allocation.

But I have no basis to think that that agreement

would then include folding in foreign creditors who did not participate, and I don't think sought to participate, in the mediation on that issue. And --

MR. UNDERWOOD: I think --

THE COURT: And so, you know, I think courts have been recognized that there is a basis for separate classification. In fact, making a distinction even between foreign claimants and U.S. claimants as long as there's a rational basis for it, and including in the Sixth Circuit in the Dow Corning case, Class 5 Nevada Claims v. Dow Corning Corp., 288 F.3d 648, 642 (6th Cir. 2012).

Now, that was a case where there was evidence as to the different types of recovery in different countries. So -- but the principle is you don't have to -- you can discriminate between domestic and foreign creditors if there's a rational basis for it. And it seems to me there's a rational basis.

I -- what is not clear to me is whether these three -- I'm sorry, I think it's -- not three, I think it's six creditors, would have any right to get involved in the allocation abatement aspect of this, and frankly, how much, if they even did, would go to them as opposed to their share of the $15 million in cash, which is coming out right away, which they could certainly apply to abatement if they liquidate their claims and they're against the U.S.

MR. UNDERWOOD: I think the difficulty that I'm seeing here, Your Honor, is that I haven't seen anybody distinguish what makes the international border here. What makes Windsor, Canada different from Detroit? What makes a Canadian Mohican different from a New York State Mohican?

THE COURT: I --

MR. UNDERWOOD: And that I understand, Your Honor.

THE COURT: Well --

MR. UNDERWOOD: I understand.

THE COURT: -- but I'll answer that -- I'll try to answer that question from my own perspective, and you could try to persuade me otherwise. I think the answer is we had a many-months-long process in the mediation with Messrs. Fineburg and Philips, as well as a mediation among the states themselves, regarding the public side allocation, which was incredibly difficult. And frankly, I don't see how do we open that. I just -- you know, there was -- people -- look, I -- people did ask to be involved in the mediation. The NAACP asked to be involved in it. I said okay, but I think not having participated in that, and I can't predict how that would've turned out if the -- if your clients had sought and been granted the right to participate in it, whether the U.S. entities would've said, no, it's just too complicated.

But leave that aside. They didn't participate in

it. And at this point, we would be rewriting rules that just, you know, I think the Debtor has the perfect right under the Bankruptcy Code to have separate classification and given the acceptance of the plan, separate treatment by these two -- well, it was -- really would be four because you have the Native American tribes and the First Nation tribes, four different classes.

So, you know, it's not as if the class in which the -- your clients are classified are getting nothing. They're getting money upfront. There's no argument that they would be getting more in the -- if they had participated in the no-added Native American tribes class. And indeed given the acceptance by Class 11, I don't think that argument flies because that's a cram-down argument. That's an 1129(b) disparate treatment or unfair treatment argument.

So I just -- I don't -- to me, this objection sort of tries to fit within applicable sections of the Bankruptcy Code, but it just doesn't -- it doesn't -- to me it doesn't. It doesn't fit in.

MR. UNDERWOOD: Your Honor, I appreciate your explanation, and I'm going to try to convince you otherwise --

THE COURT: Okay.

MR. UNDERWOOD: -- in the few minutes allowed.

THE COURT: And I'm going to (indiscernible) --

MR. UNDERWOOD: (indiscernible)

THE COURT: -- to make a good -- you can hear if they have that chance.

MR. UNDERWOOD: I greatly appreciate it. And I will -- I am reserving to subsequently here address the jurisdictional question. But as to this issue, the counsel for these Creditors did reach out to the Debtors. The Debtors, in my opinion, were the first parties that had the last clear chance to address these claims in what I think is a more equitable fashion.

Mr. Dubel testified that the Special Committee never reached out to these Creditors. These Creditors filed their proofs of claim. Ultimately, Your Honor, what I would go back to here is reference to the In re Dana Corp. case in the Southern District, and Public Airways and this notion that all claimants that are in a class must have the same opportunity for recovery. I understand the notion that that you're driving --

THE COURT: They're not in the same class. They're in a different class.

MR. UNDERWOOD: All right. I'm not going to beat a dead horse there.

THE COURT: Okay.

MR. UNDERWOOD: I think the placement of them into

a different class was a problem, and that's why I actually started this argument at a different -- perhaps a higher level, which is ultimately what happens here is material to the global perception of U.S. courts and their manner in which they deal with creditors.

And I think that the perception of the Debtors not having addressed foreign municipalities in the same way that they addressed U.S. municipalities when -- and let's face it. If they were all vendors, the fact that they were across the state border would not have impacted -- all other things being equal would not have impacted their classifications, and they would have this (indiscernible).

THE COURT: I agree with that.

MR. UNDERWOOD: All right.

THE COURT: I agree with that. On the other hand --

MR. UNDERWOOD: So --

THE COURT: On the other hand, if they were personal injury claimants, a la the Dow Corning case, the Court -- the plan proponent wouldn't be within its rights to have a separate classification if there was a rational basis for it based on the different nature of their recovery. And again, there is a -- there was a very lengthy, expensive, and well-publicized process here to mediate the allocation and treatment of public creditors that those who wish to

participate in, really pretty much just had to file something if they were let in the door in a timely fashion, and they would've participated, including the NAACP for example and the school districts.

So I think -- look, clearly it is up to the Canadian court in it's -- in response to a motion for final recognition to decide this issue. But I think the record should be clear that there was no exclusion of the Canadian Municipal Creditors and First Nations Creditors from that process, and the process was a lynchpin of this plan. To now reopen it would be, I think, impossible to bring other parties into it.

On the other hand, the class in which the Canadian Creditors were classified, voted to accept the plan, and I don't -- I have no evidence that they're -- even setting aside that they -- because of that vote this is irrelevant to me legally, under the Bankruptcy Code it might be relevant to a Canadian court of recognition. I don't know, but there's no evidence that they're getting a worse deal than if they had been included in the trust structure. They're getting their pro rata share of $15 million in cash right away that wouldn't happen but for, I believe, the other aspects of the plan.

MR. UNDERWOOD: I think, Your Honor, I just want to make clear that at least the Canadian Creditors view this

as a conscious choice by the Debtors in the manner which they classified these Creditors. And ultimately, it's impossible to say how the mediation might have ended. It never even started, and that again there was a conscious choice by someone other than this Creditor.

So, ultimately -- I don't want to necessarily belabor this point any further, but it does raise the ultimate implication, which is an issue for this Court and for the United States, which is it would not be a good thing generally for the Canadian (indiscernible) to accept this Court's confirmation of a plan. And specifically with regard to this case, there is no question that that outcome would affect the implementation, I think, of the plan. So it is material, I think, in a larger perspective. I'm willing to move onto jurisdiction.

THE COURT: Okay.

MR. UNDERWOOD: And essentially, with regard to that -- and even there, it's still a release issue, I suppose. Because what we're really talking -- what I'm talking about is under (indiscernible) Petroleum Network, and I'm sure you're more familiar with the case than I am, what these (indiscernible) are affecting is an involuntary release of a foreign sovereign's, effectively, claims against the U.S. Debtor.

Now, in terms of those claims, the proof of claims

attached complaints that assert fraud, public, nuisance, a variety of forms of relief. And those are the very same forms of relief that are sought by United States municipalities.

In terms of the jurisdiction of this Court to enter a nonconsensual release under Section 1141 of the Bankruptcy Code, I think there is fundamentally -- and this is absolutely without offense to the Court, but I think that there is a jurisdictional question at the outset of whether a non-Article 3 judge actually has that authority.

I'll pull very quickly back to the second aspect of this issue, which is, all right, we all agree about what Section 106 specifically says, but what was it really intended to do and what does it really mean in this case? And are there other statutes that abrogate 106 for the very specific purposes of this case? And I think in terms of 106, the Debtors, who really don't cite any case law or analysis of 106, I think -- I think the way that I look at 106 and the way other courts have looked at Section 106 is that it is to preserve defensive rights.

Meaning preserve avoidance actions, preserve, you know, separate Debtor actions against foreign sovereigns so that they can't sneak in and sneak out of the court without having full relief on both sides. But I think here, as I stated earlier, there is no -- there are no such claims that

have been asserted. So ultimately, with regard to 106, the -- ultimately, the way that the foreign sovereignty immunity statute actually trumps Section 106 in the Code. To be frank, I couldn't find any law on that either way.

And maybe Davis Polk can correct me on that, but ultimately there is no exception under the Foreign Sovereign Immunities Act that would otherwise apply here. So other than filing a claim, which unquestionably my clients had to do, wanted to do, they wanted to participate in this case, it was important that they did it because, frankly, Canadian assets are affected by the proceedings before this Court, and there's no denying that.

I think ultimately there's a real question here about whether the Foreign Sovereign Immunities Act, under this very specific factual circumstance, may trump the plain language of Section 106. Because what we're talking about here is really the relationship between two countries, and I'm certain that the people of Canada will not be happy when they come to understand that there is an entire abatement procedure that they were effectively left out of. Maybe that is what it is, but that's fundamentally, I think the Foreign Sovereign Immunities Act jurisdictional Section 106 issue before this Court. And I hope I was able to frame that in some fashion.

THE COURT: Well --

MR. UNDERWOOD: And we'll certainly raise it on an objection.

THE COURT: I understand your objection, and I think it really comes down to the Court's, the Circuit Court's, analysis of, first, what is being done when a plan does enjoin the prosecution of a third-party claim; and secondly, whether, by its plain terms, 106(a)(1) and (b) permit that with regard to an entity, a governmental entity that has sovereign immunity.

But I will note, though, that the injunction is, as argued by the Debtors and their allies, the committee and the other ad hoc groups that are supporting the plan, serve an integral role enabling any recovery under the plan, including the recovery in Class 11, which is what your clients would have.

And again, as far as participating in an abatement program, the -- I have no -- nothing to suggest that the pro rata share of the Class 11 consideration that would flow to the Canadian Creditors that you represent would be anything less than the value of the abatement program that would flow to them, which is, you know, obviously something that, I mean, directly flow to them. To the extent they're right across the border from a state or municipality that has that type of program, there would be some indirect effect, as was testified. But notwithstanding the size of the value that's

going into the NOAT and Native American tribes' trusts, when you look at the denominator, if you added your client's claims to it, it's quite possible to me that, even if they had asked to participate in the mediation, and had been included in the procedures, these creditors wouldn't have any aliquot share of that abatement program that would come close to their pro rata share of the cash that they're getting right away that they can themselves apply to abatement.

MR. UNDERWOOD: I think, Your Honor -- and it's a funny thing because I have always said I would never, ever listen to a client who says -- that says to me that it's just about money. This isn't just about money, and I think we cannot say because there never was an allocation to Canada as to what it might have received as to these claims. But that be -- I would also say that, and sincerely, very sincerely, the municipalities and First Nation's interests in the Class 4 and 5 programs wasn't just money. They were genuinely interested in the other aspects of the abatement programs that they are also not partaking in.

THE COURT: Well, they have every opportunity to use those programs as a model for their own use of the money that they're getting, and frankly to -- if they -- if there are other municipalities that would oppose that, try to convince the court in Canada that the condition of

recognition is that the recoveries by Canadian creditors be used towards abatement.

MR. UNDERWOOD: I -- I'm sure that someone will make those arguments in Canada before the NCAA. I guess my concern also is that the result of this confirmed plan will be, to a degree potentially, a handcuffing of the Canadian Creditors to recover presuming that they are locked out of any recovery against the U.S. assets. They're not a part of the NOAD or the tribal trust.

And presuming that the liquidation value or net sale value of the Canadian entity is then conveyed to those very trusts, which the Canadians are not participating, and presuming that as (indiscernible) --

THE COURT: That's a mistake. Your clients, to the extent they have claims against the Canadian entities, can go against the Canadian entities. There's -- they're not being enjoined from doing that. To the extent they have claims against the Canadian entities, they are not being enjoined from proceeding against them. There might be a race to the courthouse on that point, but they have those claims.

MR. UNDERWOOD: I understand.

THE COURT: There's no doubt about that. So I just --

MR. UNDERWOOD: I understand the fundamental

difficult position, and I'm greatly appreciative of the work that everyone in this case has done to achieve any kind of result in an otherwise insoluble case. But I think ultimately when we look at the liquidation value of those Canadian assets, they pale in comparison to the U.S. assets.

THE COURT: But --

MR. UNDERWOOD: Or their treatment of the note. I think ultimately if we believe that the Canadian Creditors will be handcuffed in their ability to collect against the Sacklers under Canadian actions, we've left Canada with very little from this proceeding, and that is what it is. And I told clients that on the first day that I took this case. I think ultimately I appreciate Your Honor's work in this case.

THE COURT: Okay.

MR. UNDERWOOD: Thank you.

THE COURT: Thank you. All right. Any rebuttal?

MR. TOBAK: Briefly, Your Honor. The first point I'll note -- and this is Mark TOBAK, Davis Polk for the Debtors, is that oddity that we had earlier in argument that it was illegal for the Debtors to classify states in the United States together with the municipalities of counties within that state. And now we have an argument that it is apparently illegal for the Debtors to classify cities in an entirely different country separately from the states and

municipalities in this country. And I think that gets to the point of, you know, it was asked many times why the Canadian municipalities and First Nations are being (indiscernible).

THE COURT: You cut out. I'm not sure what happened there. Are you there?

WOMAN: (indiscernible)

MR. TOBAK: All right. Your Honor, can you hear?

THE COURT: Yeah, now I can hear you.

MR. TOBAK: Thank you. I don't know where it cut out, but I'll say that the suit (indiscernible) --

THE COURT: You got -- you cut out again. Yeah, I think when you move your paper you might mute yourself.

MR. TOBAK: Oh. There's a (indiscernible) keyboard underneath my lectern.

THE COURT: There you go.

MR. TOBAK: Your Honor, I apologize for that.

THE COURT: That's fine.

MR. TOBAK: In any event, the point is that Canada is a separate country, and that's fundamentally important for many reasons. The most important reason, as Your Honor's already noted, is that there is an independent company, an IAC, in Canada called Purdue Canada, and that entity sells and markets pharmaceuticals in Canada. The importance of the border, which Mr. Underwood asked about,

is particularly important in the context of highly regulated pharmaceutical products which are subject to a great deal of regulation in the United States, an entirely separate regime of regulation in Canada under that country's laws. That is why Perdue Pharma does business in the United States and not in Canada.

To the point of the Canadian municipalities' desire to participate in an allocation and abatement scheme, fundamentally we hope, as Your Honor has already noted, that perhaps this plan of confirm can be used as a model for a similar scheme in Canada with respect to Canadian municipalities and assets of the Canadian company.

I will note, however, that in this plan here, the testimony is that it has taken literally years, including years before Perdue filed for bankruptcy, to develop this plan and to develop an abatement model that was targeted to the communities in this country. It would be entirely inappropriate to attempt to in-graph that model into different communities in the different country under different legal regimes with different allocations of national, provincial, and local responsibilities, and to address different conduct by different companies and solve the different needs.

With respect to the jurisdictional point, I think it can't really be said better than 106(a), which

specifically provides that it abrogates the sovereign immunity of any governmental entity, including a foreign state with respect to Section 105 of the Bankruptcy Code. I can't find in the Code any suggestion that it is limited only to the assertion of a counter claim by a Debtor.

As Your Honor also noted, the jurisdictional basis for this proceeding is a simple, Section 1334, and this is on the basis of any other aspect of a plan being confirmed. With respect to whether there's any case holding that sovereign immunity is abrogated by Section 106, one case is the In re RMS Titanic case, which is at 569 B.R. 825 from the Middle District of Florida 2017 which states that pursuant to Section 106(a), foreign states can no longer assert sovereign immunity from liability under the Bankruptcy Code.

And then it notes that Section 106 abrogates sovereign immunity as to a governmental unit. It cites to several cases. One from the Ninth Circuit and others from other bankruptcy courts across the country. I think that's really all there is to say with respect to sovereign immunity other than, also, the fundamental point that the municipalities and First Nations did come to this court and seek to participate in this proceeding, which is also a waiver of whatever immunity they might have had otherwise.

Unless Your Honor has any further questions, I

think we rest on that and our papers.

THE COURT: No, I think that's fine. Thank you both.

MR. UNDERWOOD: Your Honor, may I make one comment as to the reference to the RMS Titanic case?

THE COURT: Sure.

MR. UNDERWOOD: And I think it came through in what counsel said. The RMS Titanic case refers to the liability of a foreign sovereign. It doesn't refer to the taking of a right, and I'll rest on that, and I appreciate it. Thank you.

THE COURT: Okay. Thank you. All right. It's 1:30. We have probably another two or three hours at most. Does it make sense to take a break for lunch?

MAN: Your Honor, that actually is exactly what I was going to suggest. And just for people who are following the hearing, we have the (indiscernible) and Bridges, I think, objection up next, then insurers, then pro ses, and then whatever miscellaneous matters are remaining with respect to the releases. I think the allocated time for those things is actually a little bit under three hours. So hopefully we will be able to keep to that, but we'll see how the afternoon goes.

THE COURT: Okay. So I'll come back at 2:30 then.

MR. UZZI: Your Honor, if I may, just before we

break, I have a comment that I hope is helpful as it relates to narrowing the release a little bit. And again for the record, Gerard Uzzi of Milbank for the Ray Sackler family. Now, I realize, Your Honor, when I made the presentation earlier, I said something, with I meant, and it's a little inconsistent with one of the words on the page, which is there is no release of tax liability. But the carve-out for that is in the definition of excluded claim, and when I went back and checked --

THE COURT: But that's been there for a while.

MR. UZZI: Well, and it has been, Your Honor. And I realize, though, I said any taxes. What it says in excluded claims is income tax, and we meant any tax. And so we could strike the word income. And just -- I know people are preparing for, you know, possible argument after lunch. And just if that helps simplify things, I wanted to make that announcement prior to the break. That's all.

THE COURT: Okay. That's good. Thank you. All right. So again --

MR. UZZI: You're welcome.

THE COURT: -- we'll come back at 2:30.

(Recess)

THE COURT: Okay, good afternoon. This is Judge Drain. We are back on the record In re Purdue Pharma LP and the confirmation hearing.

The next matter, or next topic rather, of oral argument I believe is the argument on objections filed by Mr. Overton and his counsel to Creighton Bloyd, Stacey Bridges, and Charles Fitch. Creighton Bloyd actually had two objections. The other two people joined with him in one. And I'm sorry, I said Overton. And I apologize, Mr. Ozment, it's Mr. Frank Ozment.

So I think the Debtor's counsel is going to go first on this and then we were going to hear from Mr. Ozment.

MR. TOBAK: That's correct, Your Honor. For the record, it's Marc Tobak from Davis Polk for the Debtors.

Reserving most of our time for rebuttal, I want to make two points with respect to the objections by Mr. Bloyd, Ms. Bridges, and Mr. Fitch to notice provided to incarcerated unknown claimants.

And the fundamental point, Your Honor, is that this is not their objection to raise. They do not argue that they were not provided with the adequate notice, and they can't. That would be contradicted by the facts.

According to the timestamp on Ms. Bridges' proof of claim, she filed just three days after this Court entered the bar date order in February 2020. And Mr. Bloyd filed his proof of claim in June 2020.

Mr. Fitch, by the way, hasn't filed a proof of

claim even though he is a plaintiff in an adversary proceeding against the Debtors. And we have been in contact with his counsel since at least January of this year.

So their objection to notice is raised on behalf of other parties who, as far as we were aware, Mr. Ozment does not represent in this proceeding, and as far as we are aware, not before the Court. Mr. Ozment's clients, therefore, lack standing to assert the rights of other parties in attempt to thwart confirmation of the plan.

And I quote from the Second Circuit's opinion in Kane v. Johns-Manville, which is 843 F2.d 636 at 642, "Generally, litigants in federal court are barred from asserting constitutional and statutory rights of others in an effort to obtain relief for themselves." That rule precludes Mr. Ozment's clients from raising the alleged notice rights of others.

Indeed, the Second Circuit's decision in Kane is almost an exact parallel here. There, an asbestos claimant in Johns Manville bankruptcy attempted to appeal on the ground that other asbestos claimants had not obtained adequate notice. The Second Circuit refused to entertain that appeal, and it held that an objector who had himself received notice could not assert the alleged rights of third parties.

Judge Newman, for the panel, noted that, "The

general rule that third party standing is particularly relevant in bankruptcy proceedings, as parties may often find it personally expedient to assert the rights of others in attempt to block confirmation of a plan." And that quote is from 843 F.2d at 645.

I don't doubt the sincerity of Mr. Ozment or his clients. But in this case where his three clients stand, just as in Kane, opposed to over 95 percent of the voting creditors in their class, opposed to the statutory fiduciary, all unsecured creditors, and also opposed to the Ad Hoc Group of individual victims, there is more than sufficient reason to conclude that his clients lack standing to assert the rights of others.

I also briefly note that the objection was quite untimely. Your Honor approved the Debtor's extraordinary and exhaustive noticing program in February 2020. And that program was expanded through the extended bar date order, which is at Docket 1221, on June 3rd, 2020. And as Ms. Finigan testified earlier, the Debtors engaged in yet another additional and extensive noticing program in connection with the confirmation hearing. And that was approved on June 3rd of this year at Docket 2988 in the exposure statement order. Mr. Ozment and his clients never before raised these issues until filing their objections on July 19th.

With all respect, had they wished to alter the notice program rather than belatedly point to it as an obstacle to confirmation, it could have been raised earlier at a time in 2020 or 2021 when it might have -- when things might have been changed.

With that, I will reserve the rest of our time for rebuttal.

THE COURT: Okay. Do you want to -- there is a second declaration. Are you going to deal with that separately? A second objection by Mr. Creighton.

MR. TOBAK: I believe we addressed all -- both the Bloyd and Bridges and --

THE COURT: I'm sorry, Mr. Creighton Bloyd.

MR. TOBAK: Mr. Bloyd, correct. So that's the one at -- I think it's Docket 3277.

THE COURT: Right.

MR. TOBAK: We'll rest on our papers with respect to that unless the Court has any questions and rebuttal to Mr. Ozment's argument.

THE COURT: All right. So you're reserving rebuttal on that one. Okay.

MR. TOBAK: Correct. Thank you.

THE COURT: Okay. All right, Mr. Ozment.

MR. OZMENT: Your Honor, thank you. This is Frank Ozment, and I represent Creighton Bloyd, Stacey Bridges, and

Charles Fitch.

With respect to the Article Three and case or controversy issue, I'm not familiar with the case that he cited. But I would point that we are not bringing a case or controversy here. There is a case or controversy already. I think, you know, the power of Congress to regulate bankruptcy under Article 1, Section 8, is really what this is about, is our coming in and saying, you know, we don't think this is fair.

With respect to Ms. Bridges in particular, while she is not presently incarcerated, she certainly has been. And, you know, that threat remains. So to the extent that there is some issue there, perhaps it's capable of repetition but (indiscernible).

The more important thing I think is to get to the heart of what we're saying here. And I normally don't read a closing argument to a judge, but in the interest of time, I wrote this one down.

In Mullane v. Central Hanover, the court recognized that due process requires a debtor to give notice to a creditor before the creditor's claims could be extinguished. If the identity of the debtors and their whereabouts are unknowable, then those can be by publication. If the identity and whereabouts are reasonably ascertainable, the creditor cannot rely merely on those by

publication absent some other extraordinary circumstances.

Over the years, courts have recognized that creditor (indiscernible). The creditor has a lien, the debtor generally has to do a little more. The creditor is unsecured perhaps by publication by notices where acceptable if the creditor is unknown.

Here, there is no doubt, and Christina Pullo testified about it in her declaration but also in cross, the Debtors made a herculean effort to notify a lot of people. And to a large extent, they appear to have succeeded, with one very notable exception.

Their efforts were focused on people in the free world, not so much people in prison. Normally, this might not matter much. In an ordinary case, notice provided to the free world might leak over into the incarcerated world. And if this were a case about promissory notes and the creditors were all banks, well, you wouldn't expect to find too many creditors in prison, or at least in federal prison -- I'm sorry, in state prison.

But this is not a normal case. This is a case about addiction. Addiction drives people to crime, and everybody knows that. Prisons are disproportionately likely to house people suffering from addiction. Moreover, this was noticed during a period in American History that was very nearly unique. A pandemic, when common sense dictates

that the public not go in and out of prisons, which of course are places where social distancing is pretty much impossible.

While Ms. Pullo I think gave very good testimony and certainly put some of my concerns (indiscernible) notice of the free world, it was also clear from her testimony that the Debtors did very little to alert prisoners in particular about the need to file claims.

This is particularly unfortunate in this case -- and this goes somewhat to Mr. Bloyd's objection, Your Honor -- because victims should have been lienholders under the Mandatory Victims Restitution Act. The United States and the Debtor basically agreed that victims would not get their rights under the MVRA because it would take too long to figure out who they were or just generally to calculate what they would receive.

And at this point, I want to emphasize that was not a proceeding in which Davis Polk represented the Debtors.

Ultimately, that issue may be a matter for the sentencing court to revisit. It may ultimately be something that Congress wants to take up. But in the meanwhile, that deprivation of lienholder status and that effort to ignore the rights of victims under the MVRA -- sorry about that, Judge -- aggravates this situation that we (indiscernible).

Personal injury victims might argue that their liens should prime those of the (indiscernible) states. Right now, we are merely trying to avoid the injury that resulted from the lack of notification. Interestingly -- well, I'll just skip that point.

There is a solution to all this, although this not be the time, place to take it up. Bridges and Bloyd filed proofs of claim on behalf of all people similarly situated to them. That is to say living former opioids addicts who are in active recovery. Perhaps allowing their claims to serve as timely filed proofs of claim will overcome the (indiscernible) notice, especially for those who are locked up.

As a practical matter, this may not mean much from the perspective of outsiders in the free world. For prisoners, however, the recovery of amounts as low as $3,500 is life-changing. It can pay off fines, pay the fees necessary to get into community corrections, or pay child support.

But, again, the proof of claim issue is not before the Court today. We have filed a motion to allow those proofs of claim to be treated as adequate for satisfying the bar date. However, we don't have a hearing date on that yet. I thought we did, and I called Ms. Li yesterday and she said she didn't (indiscernible).

The issue today is whether the Debtors proved that they provided notice to one of the most densely-concentrated populations of opioid use disorder victims in the nation, that is to say the men and women who are incarcerated. I don't think it's very hard to find those people. They have publicly-listed addresses. At each address, the concentration of victims is high.

I respectfully submit, and somewhat reluctantly submit in light of all the work that's gone into this case, that confirmation should be denied unless and until the Debtors are going to get or allow the prisoners formally to file late claims.

And that ends my written statement, Your Honor. And with respect to Creighton Bloyd's objection, I will tell you that I filed that because I felt as if I did not file it, then I would not be able to take it up with the United States District Court when sentencing is concluded. I don't know, quite frankly, that there is much that you can do about that in this proceeding, but I did feel like it had to be (indiscernible). And I'll be glad to take questions on it if you like.

THE COURT: Well, I have reviewed the Mandatory Victims Restitution Act. I don't think I have questions on it. And ultimately that is an act that applies I think at the sentencing stage. So I don't think I have any questions

there.

As far as the notice point is concerned, I think standing is probably an absolute barrier here since it does not seem to me that Creighton Bloyd or Ms. Bridges or Mr. Fitch have an injury to be addressed by the relief sought in the first objection to them. So I don't think I have questions, Mr. Ozment.

MR. OZMENT: Thank you, Your Honor. That's it for me.

THE COURT: Okay. You're on mute.

MAN: Yes. I see Mr. Shore has joined, and I defer to him if he wishes to respond to any points regarding the treatment of personal injury claimants under the TDPs.

MR. SHORE: Two points, Your Honor. It's Chris Shore from White & Case on behalf of the Ad Hoc Group of personal injury victims, which includes 55,000 individuals, including incarcerated individuals.

It's unclear to me what the status is of the full objection. We've heard some argument today on it. I'd like to address the class proof of claim issue because I think to some extent what is happening today, or if the Court confirms the plan is going to affect the class claims status. Two, to address the claims and the objections that somehow either of the TDPs is disproportionally unfavorable to incarcerated individuals or otherwise does not take into

consideration their unique circumstances.

On the first point, the TDPs, which are plan supplements -- I think the 16th plan supplement was just filed -- the Court will be approving those. Those require that anybody who receives money from the TDP has an individual proof of claim on file.

So while Mr. Ozment is saying he wants to reserve the right to seek class treatment, he hasn't done it yet. And if you -- without getting too far into it, the Musicland factors that would go into whether or not that claim would be filed, it would certainly be our position that the allowance of a class proof of claim, which would, according to the papers, take the personal injury class from 135,000 individuals to 1.5 million individuals, would affect the administration of the estate going forward because the whole TDP gets upended, distributions are made uncertain, and you're going to have to change a central feature of the TDP, which is that it's being done on an individualized basis.

So, you know, while I appreciate he's not pressing and not seeking today class treatment for the claims, we are going to have some distinct views with respect to whether that would ever be appropriate.

But to be clear, I don't think the objection is that the TDPs as drafted were drafted in bad faith. I think the point Mr. Ozment was making in the objection was it

doesn't take into consideration the unique facts of incarcerated individuals.

And I hope Your Honor can see from the TDPs and what have been said about them, there was a great deal of thought and effort that was put into balancing the due process issues on the one hand with code requirements and the need to get money out to individuals in a timely fashion. And to some extent, it was a zero sum game. The more money that's spent on process, the less money there is to distribute at the end of the day.

The -- one of the central premises of the TDPs is the requirement under the Code that people file proofs of claim. And the TDP, the notice in the TDP backs off of the Debtor's incredible notice program, both at the -- or with respect to both bar date times.

Even so, there are provisions in the TDP which allow individuals with late filed claims to either come to the Court and seek relief under Rule 9006 or go to the claims administrator, who has authority in his or her discretion to allow the claim as timely. And that's Footnote 6 in the non-NAS TDP.

So there's nothing discriminatory against individuals who are incarcerated. They have the same right and ability to file a late claim as anybody else. Nor is the actual claims process discriminatory. Every claim under

the Code is required to be substantiated with proof.

There are two -- and maybe Mr. Ozment can address it with more specificity. There are two ideas I think buried in the concerns of incarcerated individuals. One is it just takes them longer to get the health records that are necessary to substantiate their claims. Again, under the TDP, the claims administrator has discretion to elongate the deadlines for any given individual. That's Footnote 8 in the non-NAS TDP. So there is already built-in flexibility to the extent it's a question of timing.

We extended the question of being able to gain access to records at all, which is an issue faced by some incarcerated individuals. Again, the TDP provides that if the individual is not able to gain access to their medical records, they can file declarations to that effect and make the necessary showings to obviate the need for their actual medical records to substantiate.

So, you know, I'm not sure what else we can do consistent with the law and the Code to relieve the obligations that exist under the Code with respect to people having to file proofs of claim and people having to substantiate proofs of claim with proof. Because we just can't have a TDP in which any individual can come forward without any proof and take money out of the PI trust that is otherwise slated for real individuals with real proof and

real harm.

THE COURT: Okay. Thank you.

MR. OZMENT: Your Honor, may I briefly address that?

THE COURT: Well, I just want to make sure -- do the Debtors have anything more to say on this point, or shall I just hear briefly from Mr. Ozment?

MAN: With regard to the TDPs, no. With regard to notice, while Your Honor's ruling with respect to standing probably disposes of the issue, just given the importance of notice and its scope of notice provided, I want to note just two points if that's appropriate right now.

THE COURT: Okay.

M: The first is that under the law, constructive notice by publication is sufficient notice to unknown claimants. It's not accurate to say that everyone who is incarcerated was provided notice through a constructive means such as publication or television or other forms of ads. To the contrary, any known claimants, as is set forth in Ms. Finigan's declarations, were provided with actual notice by mail.

Secondly, in response to a question from Mr. Ozment in the hearing, she testified that there was actual specific outreach by mailings directed to prison outreach organizations and to entities responsible for the management

of prison facilities, which is set forth in her testimony of August 12th, 2021 at Transcript, Page 76, Lines 10 through 18.

And the third point builds off those two. And on the other hand, we don't have any record evidence to support Mr. Ozment's and his clients' assertions regarding the scope of notice and what is or isn't available in prisons. And while, again, we don't doubt the sincerity of any of them or in any way discount the importance of providing relief to those who are incarcerated, on the other hand, there just isn't record evidence of those assertions. And with that, we rest on our papers.

THE COURT: Okay.

MR. OZMENT: Your Honor, first, a quantitative issue. This would not amount (indiscernible) the claims. There are roughly 1.2 million in physical custody of state prisons. And, you know, roughly 20 percent of those probably use opioids even while in custody. But that doesn't mean that they product manufactured by Purdue. So we're not talking about flooding the trust with those claims.

With respect to the issue regarding trust distribution procedures, we are not asking for relief on it. As a practical matter, by the time a prisoner arrives in prison as opposed to jail, the people who run those

correction facilities know pretty much everything there is to know about them. And so hopefully to the extent that people have had an opioid use disorder, problem that's well known, and also perhaps even a level of what drug was it. So, for example, you know, some drug courts will keep up with, you know, was it OxyContin, Lortab, what led you astray.

So we're not asking for relief on it. But as a practical matter, as you saw in the hearing involving Augustus Evans earlier, I think it was last week, you know, prisoners need help navigating this. And it's very difficult to motivate and engage people to help them, especially volunteers, when, you know, it could be sort of a dry well and in the discretion of my fellow bar member here in Birmingham, who is a fine fellow, Ed Gentle, who is the claim administrator.

I think, you know, we're going to get people engaged in helping these folks, as we did with voting rights issues and things of that nature. They need to have some understanding that, you know, if you get your stuff together and it's in order, you're not totally wasting your time. Otherwise, these claims are not going to get filed. It's just going to be too overwhelming for them.

And finally, in terms of filing a proof of claim late and so forth, one of the last things in the world we

want to do is snow the Court, or Mr. Gentle, or anybody else with a ton of paperwork on whether somebody should be allowed to file a late claim.

What we're talking about here is just one (indiscernible). Okay? We're not asking for the right to vote as we did -- as one of the earlier petitioners did. We're just saying there's a problem with notice. And it needs to be addressed so that those people who are, you know, perhaps not as poignant and heart-tugging as some of the other stories, can file claims where it's appropriate.

So much of this is getting ahead of ourselves. But since we touched on this issue, I wanted to clarify that we're not, you know, going (indiscernible).

THE COURT: Okay. Thank you. All right, thank you both.

I think the next topic that is on is objections by certain insurers to either aspects of the plan or proposed aspects of the confirmation order. And the Debtors, again, will go first, as will the -- they will be followed by the Ad Hoc Committee of Certain States and Other Governmental Entities. And then we'll hear from Navigators' counsel, I think Mr. Anker.

So who is going to be speaking on behalf of the Debtors on this?

MR. SINGER: Good afternoon, Your Honor. It's

Paul Singer from Reed Smith on behalf of --

THE COURT: Okay, afternoon.

MR. SINGER: Thank you, Your Honor. We are special counsel -- special insurance counsel to the Debtors. I will be (indiscernible) with provisions of Section 510 of the plan, which we believe as written is appropriate and consistent with appliable law. Emily Grim will be speaking on behalf of the AHC and will address the findings of fact and the conclusions of law to which the insureds have objected.

Section 526(I) of the plan, Your Honor, provides that the Master Disbursement Trust will receive the Debtor's rights under any insurance policy that may -- and I emphasize may -- provide coverage for opioid claims.

The purpose of the transfer is to enable the MDP to pursue recoveries under the Debtors' policies, and if successful, would distribute any proceeds recovered to opioid creditors pursuant to (indiscernible) the plan.

This arrangement is typical of those found in mass tort cases. The assignment of insurance rights has been proved under Section 1123.05, most notably by the Third Circuit in the Federal Mogul case.

To be clear, the plan does not require any findings as to the value of the insurance or the extent to which the policy would actually cover opioid claims. But

the plan does seek findings intended to insure that the plan itself doesn't somehow create additional risk to recover that the Debtors would not have faced prepetition. For that reason, the plan includes language in Section 510 that confirms, consistent with applicable law, that this Court's findings are binding on insurers but then any other defenses to coverage insurers may have are preserved.

According to certain insurers, they should be entitled to argue in first confirmation coverage litigation that keep components of the plan vitiates coverage. Under objection, they assert that the plan would insulate them from any aspects of the plan or the confirmation order that may be detrimental to these arguments. They make these assertions notwithstanding the understanding the adversary proceeding that findings of the Court would be binding on them in the coverage litigation.

Quite simply, the law does not permit the insurers to undermine the plan's settlement framework, but to use it as a basis to stake their coverage obligation. To the contrary, the Bankruptcy Code, the policies underlying it that the parties should negotiate a plan that settles claims, and the insurers' own policies, may of which contain provisions that, notwithstanding the bankruptcy of the insured, they remain in effect. All of that prohibit the insured from seeking an exemption from the (indiscernible)

of the plan, the confirmation order for the Bankruptcy Code.

To be sure, neither the Bankruptcy Code nor its prior iteration in 1898 or 1939 requires the inclusion of the broad neutrality language sought by the insureds. Indeed, the term neutrality as used by the insureds is a misnomer. What the insurers are seeking are special exemptions from rulings that are otherwise binding on them as they would be on any other party in interest. There is no law saying matters that are decided in connection with the plan confirmation can't be used in a subsequent insurance coverage action. Indeed, Your Honor confirmed this we believe in the insured's adversary proceeding --

WOMAN: Quiet. I think they heard me yell.

MR. SINGER: Am I being heard, Your Honor?

THE COURT: People should keep their phone on mute unless they are speaking.

MR. SINGER: As I was saying, the principle that plan confirmation orders can be used in other proceedings is longstanding. Discharge orders are often used with effect to the release of claims under a plan in a state law proceeding. And indeed, free and clear orders likewise issued under Section 363 are often used in state court proceedings to demonstrate that there's no success or liability.

The carveout that the insurers seek here, if you

call it neutrality, was developed in the early 2000s in the Combustion Engineering and Pittsburgh Corning cases as a tool to limit the ability of a debtor's (indiscernible) frustrate or delay the plan confirmation process.

Indeed, each of those cases went to the Third Circuit several times, and the Pittsburgh Corning case took over a decade to get to confirmation.

The neutrality language that the insurers seek indicate that they would have no -- the confirmation would have no impact on their rights. And by that, they would be deprived of standing to object or interfere with confirmation. Such provisions (indiscernible) on the specific considerations of each case. Here, no one has concluded the insureds are deprived of standing. Indeed, they have appeared and are being heard here.

As such, as any other party in interest, the insurer should not be able to deny the existence of a plan confirmed by this Court in conformity with the Bankruptcy Code and the findings by this Court contained in the order approving the confirmation and the settlements embodied in the plan. Accordingly, we believe that the language as set in Section 510 of the plan is appropriate and (indiscernible).

Unless the Court has questions, I would like to turn the podium over to Ms. Grim on behalf of the AHC.

THE COURT: I don't think I have any questions for you, Mr. Singer. If I have questions, it goes to -- or they go to what besides the transfer of the policies to the trust, to the MDT, are the Debtors and their allies seeking to put in the confirmation order. But I think Ms. Grim is going to discuss that.

MR. SINGER: If she doesn't, I can come back to it, Your Honor. Thank you.

THE COURT: Okay, fine.

MS. GRIM: Thank you, Mr. Singer. And good afternoon, Your Honor. Emily Grim, Gilbert LLP, counsel to the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants.

Your Honor, the Debtors have included a number of findings and conclusions in the proposed confirmation order that are necessary to preserve the value of the insured's rights being transferred to the MDT.

We provided Your Honor with a list of these findings in Exhibit A in our joint reply to the insurer's confirmation objections, so I won't read them word for word unless you'd like me to. But generally speaking, they provide that the settlements embodied in the plan are reasonable and were negotiated in good faith, that the insurers had notice and an opportunity to participate in the negotiations, and that the negotiation and resolution of the

Debtor's liabilities through these bankruptcy proceedings shall not excuse any insurer from its coverage obligations, regardless of any contrary policy terms.

The purpose of these findings is to ensure that nothing about the plan itself or the Debtor's actions in negotiating and proposing the plan diminishes the value of the insurance assets being transferred to the MDT.

Now, certain of the Debtor's insurers have argued in their plan and confirmation objections that this Court can't issue these rulings. Their view is that they should be entitled to argue in coverage litigation that key components of the plan release them from any and all liability under the policies.

One of the defenses that they've specifically said that the plan must preserve for them, that the plan's settlement of the opioid liabilities violates the policy's consent to settle provisions. They argue that these are just your typical, non-core, state law based coverage defenses, and therefore that they must be decided in the insurance adversary proceeding and not here. We would argue that that's not accurate for a number of reasons.

The first, these findings don't require the Court to rule on garden variety coverage disputes. They don't require the Court to rule on whether the policies provide coverage for opioid liabilities, they don't require the

Court to determine the value of any such coverage. What they seek is a determination that the insurers cannot disclaim coverage based solely on the Debtor's actions in this bankruptcy or on the contents of the plan itself.

We would argue that that's an issue that's inextricably intertwined with the Debtor's ability to marshal, preserve, and distribute their assets to creditors, satisfaction of their liabilities, and that it couldn't exist outside of bankruptcy. That makes them core issues properly decided by this Court as part of confirmation and not, for example, by a Bermuda arbitration panel considering coverage disputes post-confirmation.

The second reason that these findings are appropriate for confirmation is that they are required by the plan. The Ad Hoc Committee and the other creditors that voted in favor of the plan did so with the understanding that the MDT will be entitled to access the same rights to coverage as the Debtors for the opioid liabilities.

Now, they agreed to take on the risk that insurers could raise garden variety coverage defenses. For example, that an occlusion bars coverage for the claims. But they did not agree to take on the additional risk that the plan itself would destroy the value of the insurance asset. And in fact --

THE COURT: Could I interrupt just for a second?

MS. GRIM: Of course.

THE COURT: Sorry, you can go ahead.

MS. GRIM: Of course. They negotiated language in the plan specifically intended to protect against that risk. And I'll give you some cites.

Section 9.10 of the plan requires that the confirmation order contain a finding that the insurance rights transfer is effective, notwithstanding any policy provisions to the contrary.

THE COURT: Can I interrupt you? I understand this is a negotiated provision of the plan. But if it -- if that violates the Bankruptcy Code in some way, then it doesn't matter, right, other than that the parties' intentions with regard to the plan are frustrated. It doesn't --

MS. GRIM: Yeah. I think Your Honor has to determine -- sorry.

THE COURT: The argument to override this is really the argument under 1123(a)(5) and the caselaw.

MS. GRIM: That's correct, Your Honor.

THE COURT: Okay.

MS. GRIM: Section 5.6(I), just to give you the other cite in the plan so that you have it, requires that the confirmation order contain findings necessary to preserve the MDT insurance rights. These provisions have

been in the plan since its inception. And omitting the findings they require would be a material change to the plan.

A third reason these findings are appropriate is that they are consistent with the Bankruptcy Code and the policies underlying it. The purpose of the Code, as Your Honor well knows, is to enable debtors to use their existing assets to resolve liabilities promptly and efficiently.

If insurers were entitled to control a debtor's settlement of its liabilities in bankruptcy, that would frustrate that purpose. It would give insurers, who have no fiduciary obligations to the estate and who, frankly, have every incentive to use the reorganization process to delay or minimize their coverage obligations, an effective veto right over the plan.

Accepting the insurers' argument would mean that this Court is powerless to prevent a debtor's insurers from frustrating the Chapter 11 process, and we just don't think that's an outcome that the Code contemplates here. We think that's the very reason Congress gave bankruptcy courts tools like Section 1123(a)(5) to be implemented into the plan.

I would also like to address briefly the insurers' reference to other cases where the plan and confirmation order may have, for whatever reason, preserved all coverage-related issues (indiscernible) confirmation. And I have two

responses to that.

The first is I think there is emphasis that not all plans have preserved coverage issues for resolution post-confirmation. The Babcock case we cited in our reply to the insurer's plan objections included findings in the confirmation order that the plan did not violate any consent to settle provisions.

Second, these other cases cited by the insurers are largely irrelevant because every case is different. I can't really speak to the specific considerations at issue in those cases, but I can tell you that the findings the Debtors seek here are critically important to this plan because of its unique abatement-based trust structure.

If you look at the more traditional asbestos trust structures, claims typically are channeled to a trust, and then the trust liquidates and pays individual claimants post confirmation. So in that scenario, if the insurers (indiscernible) about what the claims were worth or whether the trust's award was reasonable, the parties would have an opportunity to litigate that dispute and its impact on the coverage post-confirmation.

But here, there is no post-confirmation liquidation process for most of the creditors' claims. There is no point, for example, at which NOAD is going to be valuing individual claims. So there's really no other

opportunity for the insurers and the MDT to establish the value of any liabilities dissolve by the plan or the reasonableness of that resolution. So that's why any dispute should be resolved here during confirmation and why this Court's ruling on these issues should be binding on the insurers.

As Your Honor knows, we have addressed the insurers' objections to specific findings and conclusions in our papers. So in the interest of time, I'll just address any specific findings on which you have questions. But before I do that, I do have one issue I would like to clean up the record for. And that is on the finding that you referenced earlier on the assignment of insurance rights.

The insurers seek to modify Confirmation Order Finding LE, which states that the Bankruptcy Code authorizes the transfer and vesting of the MDT transferred assets notwithstanding any terms of the Purdue insurance policies or provisions of non-bankruptcy law.

The objecting insurers have asserted that since they previously notified the Debtors that they don't object to the transfer of the MDT insurance rights, the Court shouldn't render what they call an advisory ruling regarding the Code's authorization of such transfer. Instead, they propose a finding that basically says the objecting insurers have not challenged the validity of the transfer.

In our joint reply to the insurers' confirmation objections, we noted that a ruling on this issue would not be advisory because another insurer, Chubb, had objected to the transfer. We understand that Chubb has formally withdrawn its objection on that point, so we do want to make the record clear on that.

But I do think it's important to emphasize that this withdrawal doesn't obviate the need for the finding. The finding addresses a crucial component of the plan, including in the confirmation order, and a condition precedent to plan confirmation. And in addition, the language proposed by the certain insurers doesn't indicate universal commitment from all insurers, including those insurers subject to Bermuda arbitration who have not appeared at confirmation. So it really just doesn't provide sufficient protection for the Debtors (indiscernible).

So I will pause now to address any questions Your Honor might have. And otherwise, I'll save any of my remaining time for rebuttal.

THE COURT: Okay. I think it's probably better to hear from Mr. Anker first and then I'll see if I have questions for you if you want to raise anything in rebuttal.

MS. GRIM: Thank you, Your Honor.

THE COURT: Thanks.

MR. ANKER: Thank you, Your Honor. Philip Anker,

Wilmer Cutler Pickering Hale & Dorr, for Navigators. Can you hear me okay, Your Honor?

THE COURT: Yes, fine. Thank you.

MR. ANKER: I am in a -- I apologize, Your Honor. I am on the West Coast. Came out for a niece's wedding. And so I'm in a hotel. And if the connection gets bad, I will do my best.

Your Honor, I am not in the habit -- and this will be the first time when I quote Admiral James Stockdale, who Your Honor may remember was Ross Perot's vice presidential candidate I think in '92, when at his debate, he said in a puzzled way that looked like it wasn't rhetorical, "Why am I here?" He got crucified for that, and I think that was unfair. History has shown it. But I am raising it as a rhetorical question, at least in part, because I don't know why we are here.

You have lots of complicated issues to resolve, and I echo the sentiments that someone had expressed earlier that, frankly, this is a case about the public interest more than a typical commercial bankruptcy.

Insurance coverage, however, is not one of the issues. And frankly -- and I will say this and it's not directed at Mr. Singer, it's not directed personally at Ms. Grim, it's certainly not directed at Davis Polk. But what I think we are fundamentally about here is an attempt by the

Gilbert firm and for coverage reasons to get precedent for other cases not before you where there are in fact tricky issues. There is nothing here that warrants the Court's intervention.

Let me start with the plan, which I hope I can deal with quickly, and then move to the findings and conclusions, which I think are where Your Honor is principally focused.

What I didn't hear Mr. Singer address was the basic point. We are prepared to live with the language -- we suggested a minor tweak, a minor tweak -- the language that was in the plan that went out to vote. This is not our language. I agree, insurers have sometimes asked for five pages on insurance neutrality. The Debtor went out with a single sentence in their Fifth Amended Plan. That sentence we are prepared to live with. As I said, we asked for one tweak to it, which was to add a sentence that made it clear what we think Your Honor already said in the ruling in the adversary that while Your Honor would be making findings, the legal consequences of those findings for coverage would be for another day.

We made that clear to the Debtors on July 5th. We did not hear from the Debtors until they actually filed, they actually filed their Sixth Amended Plan very late on the night of the 15th. I saw it for the first time on the

morning of the 16th when I got up. And it was a complete rewrite. Instead of saying nothing in the plan, the plan documents or the order will one way or the other have any affect on the rights or obligations of the insurance companies or the rights or obligations of the Debtors, they then said, provided, however, everything can change it. The plan can change it, the plan documents can change it. Any order Your Honor has entered at any point in time in this bankruptcy, any order in other litigation can change it.

And think about that for a moment, Your Honor. Most of the plan documents we have not seen yet. They are going to be filed with -- ultimately at the time it's defined to include any document necessary when the plan goes into effect or to have it go effective.

There are provisions in documents that have already been filed that state, for example, that insurance policies provide coverage, something we may well dispute given products exclusions and the like. There are references to policies that we think were -- in fact at least some insurers think were settled and released long ago.

Think about every order Your Honor has entered. I have not, I will confess, followed this bankruptcy. One of the things that I think may be lost here is that until the adversary was filed, which was in 2021, no insurer thought

that this bankruptcy affected them at all because, frankly, given the products exclusions, my client and every other client thought that there would never be an attempt to get coverage here. You will hear the merits of that later. But I don't know what happened in 2020 in various adversaries or other cases, yet their language would cover that.

So we ask that you simply go back to and the Debtors go back to the language they had when they solicited acceptances of the plan. We have suggested a tweak. I will leave it to Your Honor whether it's appropriate or not. But frankly, the main issue there is just the basic language that went out in solicitation. And no one can argue on the other side the new languages required for confirmation, but the creditors overwhelming voted in favor of confirmation with the original language, and no one is suggesting that anyone is changing their vote, and no one is going to make that suggestion and file the motion and seek relief.

With that, unless Your Honor has questions, I thought I might move to the findings and conclusions. First --

THE COURT: Could I --

MR. ANKER: Sure.

THE COURT: And maybe this goes to the findings and conclusions point. But the first sentence that -- or the first question that the Admiral asked was who am I. And

then he said why am I here. And Ms. Grim has said that you don't represent all of the insurers. In fact, there are other insurers that are covered by arbitration agreements. Am I right about that?

So when I hear you talk about the revised language for the proposed findings of fact and conclusions, that's just from your clients, right?

MR. ANKER: Your Honor, let me try to take that on, the language with respect to the transfer or assignment of the policy. First, I represent Navigators, but I have been asked to argue on behalf of all objecting carriers. So none of the other carriers objected, including the ones in the arbitration. I also think -- and I will ask coverage counsel to correct me if I'm wrong -- they have -- and I think they've proposed this to Your Honor, to have a stay of the arbitration until and unless Your Honor, or if the reference is withdrawn, the district court, decides the insurance coverage action.

But the language we have proposed with respect to the transfer issue would specifically --

THE COURT: So much for arbitration being fast and efficient. But go ahead.

MR. ANKER: Your Honor, on that point I'm not going to disagree with you. But let me just read to you the last sentence. And this is our language. Your Honor, I

don't know if you have it in front of you.

THE COURT: I do.

MR. ANKER: I am looking -- okay. If you look at our blackline, the last sentence says, "In the absence of any outstanding objections, such transfer (indiscernible) the MDT insurance rights is authorized." It doesn't simply say no one will object, it says it's authorized. The only real difference is we want a predicate that says it's based on the absence of objection by those parties who actually filed an objection. And that goes to the point I was raising earlier.

Look, I think it's a very different case. But one of my insurance clients is in another case right now that almost has as much publicity as this case. And so is Ms. Grim on the other side. And there is an effort there to assign to the trust non-debtor insurance policies. We think that is not something that 1123 authorizes, including in the Third Circuit. And I think this is all about precedent for another case not before Your Honor that can be resolved then. Our language would make it a hundred percent clear that the transfer is authorized to the trust. That is going to preclude anyone from arguing that the transfer vitiates coverage. We simply want it as the predicate that there is no dispute over the issue. And because there's no dispute over the issue, the Court can go on and not resolve -- not

reach it.

As Ms. Grim notes, the only party that objected on this ground, Chubb, has withdrawn that objection. Mr. Copper of the Duane Morris firm is I believe on the line and can confirm that if Your Honor has any doubts. But I spoke to him specifically and got that representation and therefore feel comfortable that I can confirm with Ms. Grim set on the record.

I will also say that Debtors and the Committee suggested the stay of the arbitration. So it wasn't other insurers. But that's not my fight, Your Honor. That's an issue for another day about the wisdom, or lack thereof, of arbitration.

Let's look at the other findings. The second issue on which there is some slight disagreement is over Finding JJA, where we have stricken the second sentence and added the words, "viewed collectively" in the first sentence. This is a finding, quote, "The settlements reached between the Debtors, we would add viewed collectively" and the opioid-related claimants as embodied in the plan are reasonable and were entered in good faith based on arm's length negotiations. We then would strike such negotiation, settlement, or resolution of liabilities, shall not operate to excuse any insurer from its obligations under any policy notwithstanding any terms of such insurance

policy, including any consent to settle or pay first provision or provisions of non-bankruptcy law.

Let me explain what's going on here. But let me start with a predicate. No one is asking on our side for a finding (indiscernible) the finding Ms. Grim (indiscernible). We are not asking that Your Honor find that in fact the settlements do create any defenses (indiscernible). That is a question for another day to be decided again by Your Honor with full briefing and a full record.

Let's talk now about the two things, the two tweaks here. First, why viewed collectively? Well, this is an issue specific, Your Honor, to my client. My client, with respect to some of its policies, insured a particular debtor, Rhodes, R-h-o-d-e-s. The disclosure statement notes that Rhodes did not advertise or market any opioids at all. It just manufactured generics. There is nothing in this record, nothing in this record about it at all and whether to the extent it's contributing any settlement is or is not reasonable.

You may remember in the examination -- and if I butcher her last name, Your Honor, I apologize. Ms. Horewitz, the expert for the Committee. She acknowledged on cross that her evaluation of comparing the liabilities to the assets was done on an aggregate basis looking at all of

the debtors collectively, not individually.

So that brings me to the second point. Why strike the second sentence? Your Honor, I don't know whether -- I'm not a coverage lawyer, as Your Honor knows. I am a bankruptcy lawyer. I don't know whether there are or are not defenses here relating to whether the Debtors violated policy provisions. But I do know this. There is no record before Your Honor. I know the following chronology. The mediation occurred in 2020. And it was not until 2020 there was an adversary and anyone had a clue -- I think you will get this when the evidence comes in in the insurance coverage action -- that the Debtors were even mediating and -- there was no clue that the Debtors would seek any coverage. What will the evidence be about whether the Debtors in connection with their mediation reached out to the carriers, spoke to the carriers, consulted with the carriers, sought the carriers' consent to any settlement? That -- and none of that evidence is before Your Honor today. What are the implications (indiscernible) about what that evidence is? That's going to turn on what state law may apply. Is it the law of New York, the law of New Jersey, the law of Oklahoma, the law of California? None of that in that briefing is before Your Honor, in part because the Debtors didn't seek these findings and didn't put them in their proposed order until after briefing had closed by a

month on plan confirmation objections.

We are not asking Your Honor to make any determination that somehow the Debtors have impaired coverage that otherwise would exist. We simply think that is an issue to be decided in this adversary proceeding upon a full factual record and a full legal briefing, none of which is before Your Honor today. And so not only would (indiscernible) due process where we had no notice before plan objections came in that these findings would be sought.

I will pause there. Section 9.1 and 5.6(I) that Ms. Grim and Mr. Singer referenced are all about transfer. The headings are about transfer and assignment. They have nothing to do with reasonableness of settlement. And so, no, there was no notice they would be seeking this finding or conclusion.

So, A, it's inconsistent with due process for them to seek it now. And, B, Your Honor doesn't have the evidence and doesn't have the briefing. And I will say it as clearly as I can. We are not saying, therefore, that there has been a waiver by the Debtors that they can't later argue that of course they can seek coverage, of course there is no problem here. But this is not the occasion.

And I'll just make one last point on that this is not the occasion. Your Honor has determined (indiscernible). This is not a case where insurance

coverage is a predicate to plan confirmation and feasibility. Your Honor has determined that whether or not there is coverage, this plan is feasible.

There's only two other findings, and I'll just go through them really quickly. One is a finding in Paragraph E, as in Earl, H as in Harold, in our objection, Your Honor, to the findings. I think we discussed this one in Paragraph -- I actually skipped over it. I think it was in Paragraph 1, Your Honor. Yes, it is. We are perfectly with a finding that all parties, including the carriers, had notice of the filing of the Chapter 11 cases. We are not going to claim that we were ostriches that put our heads in the sand. It was all over the front page of every newspaper in the country. But whether as a result we had an opportunity participate or notice that the liabilities were being mediated, negotiated, and resolved, that's the sentence we propose to have stricken. It's really the same point. No, until the adversary was filed, I don't think the evidence will show any carrier who had any reason to think there was going to be any effort to get coverage here. And again, Ms. Grim may dispute that, but the evidence is not in front of you, and the briefing is not in front of you, and it can be resolved in the coverage (indiscernible).

The final provision, Your Honor, is I think in our objection covered by Paragraph 5. I'm skipping over the one

in Paragraph 4, Your Honor, which deals with Plan Confirmation Order JJB. The Debtors no longer seek that finding, so there is no reason we need to discuss it. But as to the last one, Paragraph NN, again, I don't know what we're arguing about. We do not deny that Section 524(e) of the Bankruptcy Code says what it says. We are not arguing it's unconstitutional. The discharge of a debtor does not discharge anyone else in their liability. No one is arguing that. What effect, if any, any release may have, whether we had notice of it or not, are things to be argued later.

Your Honor, I want to end, unless Your Honor has questions, where I started. We didn't have due process about these findings. We didn't have an opportunity to address them. We didn't have an opportunity to retain experts and the like. And more importantly, now there is no record before Your Honor on any of them and there is no reason why you need to reach them in a case where insurance coverage is not core to confirmation in which the adversary is before Your Honor, the arbitration will be stayed. And we will proceed on a full record with full briefing. And it's particularly inappropriate in a case where whatever coverage there is or isn't will not be outcome determinative in the feasibility of this bankruptcy, and the creditors overwhelmingly voted for the plan without any such findings and with the plan and with the neutrality language in 510

that the Debtors went out with and we are perfectly comfortable with.

So with that, Your Honor, I would be happy to address any issues Your Honor may have. I see you're flipping pages. If I can be of help, happy to do so.

THE COURT: Well, I guess I wanted to focus on the language in JJA and the third sentence. What's being referred to here is settlements of the opioid-related claims. It would seem to me that any insurer of an entity that has opioid-relate liability, including the D&O insurer, should be covered by this provision. And you're just confining your remarks to insurers of companies that don't have opioid-related liability, right?

MR. ANKER: Your Honor, you referred to the third sentence of JJA, and I see two sentences.

THE COURT: Well, the third clause. Maybe it's the third clause. You don't like the phrase, you want to strike the phrase, "Such negotiation, settlement, or resolution of liability shall not operate to excuse any insurer from its obligations under any insurance policy."

MR. ANKER: Correct, Your Honor.

THE COURT: Including any consent to settle or pay first provisions. And I want to set aside an insurer of a company that does not have opioid-related claims. I don't see why this sentence shouldn't have that language in it as

to every other insurer.

MR. ANKER: So by every other insurer I take it, Your Honor, you mean an insurer of Purdue, insurer of those Debtors who marketed --

THE COURT: Who have opioid-related claims.

MR. ANKER: Your Honor, there are insurance policies -- and again, I'm going to get a little bit over my skis here because I'm not a coverage lawyer. But insurance policies as a basic predicate have as a term of them dealing with the moral hazard. If you're going to ask me, the insurer, to pay, then you've got to bring me in. You can't settle without talking with me --

THE COURT: Right. But that law is different in bankruptcy cases. So I'm just trying to figure out -- I think your point was -- and you made it by focusing on Rhodes -- that how can a settlement be reasonable of opioid-related liability if it applies to a insured that doesn't have opioid-related liability. And there is some logic to that. But I don't understand the logic otherwise. I mean, the parties have briefed the bankruptcy issue otherwise. So I mean, I just --

MR. ANKER: Let me try to address the bankruptcy issue. Your Honor, I think 99 percent of the cases about whether bankruptcy law preempts -- my apologies Your Honor -- bankruptcy law preempts state law with respect to

insurance policies and contract rights deals with the transfer question. Really two questions. Can the transfer occur on the initiation of the bankruptcy from the prepetition debtor to the estate and (indiscernible) transfer later to the trust. That's the issue in Federal Mogul, the case Your Honor cited. And it in fact goes off on the language in 1123(a)(5) that addresses whether -- that specifically says a plan can provide for the transfer of rights.

There is not a lot of law, there is very little law on whether consent to settle provisions are or are not overwritten by the Bankruptcy Code. I would ask Your Honor to resolve that issue. I'm not asking you to rule my way, but I would ask you to let that issue be briefed with a record. I think you will find a record here that there was no effort to consult with the insurers. That's not what typically happens in bankruptcy. I can tell you or represent to you that I am in other bankruptcies where the debtors come to us and say here's what we're thinking of doing. What do you think? What are your views? How do you think about it? Would you consent to this? And that's not going to be the record here I think, but Your Honor doesn't know one way or the other. And I'd like to have an opportunity to full brief that issue with an opportunity to convince you that that's not what Federal Mogul stands for.

But neither the factual record nor the legal briefing is there. And again, I'm not asking by striking this language out. I want to be a hundred percent clear. And if you think language needs to be added to be neutral to make the point express, I don't have any objection to that. I am not arguing that by striking this language, you're implicitly ruling our way on the merits. I am simply, if I can use the colloquial expression, suggesting we kick the can down the road so that down the road there can be full briefing, and to the extent it matters, a factual record.

But, Your Honor, I'll just end on this. Federal Mogul and 99 percent of the cases, Combustion Engineering and others, are about the transfer question, not about whether a debtor can settle without -- not about provisions and policies -- not about anti-assignment provisions, but about -- they are about anti-assignment provisions, but they're not about provisions that require consent or at least consultation. And obviously lots of insurers' rights are fully preserved. Let's look at one that's going to be -- frankly may make all of this moot in the end of the day.

The policies overwhelmingly have products exclusions. They exclude any liability of a carrier to the extent that the insured, Purdue's liability arises out of its manufacture of a product. No one is arguing, including Ms. Grim or Mr. Singer, that somehow the Bankruptcy Code

overrides that. No one would argue that the Bankruptcy Code overrides limits, aggregate limits in policy. No one would --

THE COURT: All right. But I was really going to a different question. I can look at and will look at further the cases on consent or pay first, et cetera. I'm really focusing just on the point you made with regard to insureds that don't have opioid-related claimants.

I don't see how -- this is really a question for both of you. I don't see how a settlement with opioid-related claimants would affect one way or another an insurer's obligation with respect to a consent or pay first provision unless the insured -- I mean, I don't see how they could be claiming on that insurance policy to pay the opioid claims. By definition it seems to me that your Rhodes issue wouldn't come up.

MR. ANKER: Your Honor, the Debtors are seeking coverage from Rhodes. I think we're conflating multiple issues. So let me try to help divide them up in a way that may be helpful.

First, the Debtors are seeking coverage from Rhodes. Our position is that they are not entitled to that coverage, and the Court should not be making a reasonableness finding that affects Rhodes. That goes to reasonableness.

THE COURT: Well, are they looking for coverage for opioid-related claims?

MR. ANKER: I believe they are, Your Honor. I don't know that there are any opioid -- I mean, I don't know that there are any -- we actually looked at proofs of claim and could hardly find a proof of claim against Rhodes.

THE COURT: Okay.

MR. ANKER: But I do think in the adversary, they are seeking coverage under the Rhodes policy with respect to their settlements of opioid liability, including I think settlements by other debtors. And so we simply want to be able -- and this is one issue -- preserve as to Rhodes the ability to argue that whatever reasonableness there may be of the aggregate settlement, as to Rhodes there is no basis for there to be a claim for coverage. Because if it is contributing, it is doing so as a volunteer because it does not face opioid liability having not marketed opioids. That's one issue.

THE COURT: Again, this language just goes to opioid-related claimants. So I don't see how --

MR. ANKER: Yes. Your Honor, I confused you, and I apologize. When I was making the Rhodes point, it was the first part of this clause, the words "Viewed collectively". There's two different points going on here. One is why did we want to add the words "Viewed collectively"? Because we

don't want a finding that's specific to Rhodes. The strikeout on the second sentence --

THE COURT: Well, I don't think there is one. It says Debtors, plural.

MR. ANKER: If we have a clear record on that, Your Honor, and there's going to be no argument, we want it viewed collectively to be clear. But the (indiscernible) is going to be in front of Your Honor. Your Honor understands that that is about the Debtors -- Debtors, S, plural -- I can accept that.

The second sentence has nothing to do with the Rhodes issue. And I apologize, Your Honor. I evidently confused you. So --

THE COURT: Okay. So I don't think we need to cover the second sentence further, because now I understand where we are on this one.

MR. ANKER: Okay.

THE COURT: Okay.

MR. ANKER: Thank you, Your Honor. Are there are any other questions Your Honor has?

THE COURT: Well, I guess I want to go back to the first part, which is I have the proposed findings, I have the plan. I don't -- you expressed a concern that under the language of the plan, the Debtors could sneak something in besides what's in the proposed findings. And say, for

example, the coverage limits or the coverage exception is waived. I mean, I don't -- is that the concern? I mean, I think I have what is before me that they're actually seeking.

So, Your Honor, let me focus you on Section 510 of the current plan as opposed to the one that went out for solicitation.

THE COURT: Right.

MR. ANKER: It is very much like the one we have. But then it has a proviso. After saying nothing in the plan, the plan documents, or the confirmation order shall alter, supplement, change, decrease, or modify the terms of the Purdue insurance policies, including the MDT insurance policies. That's all that was in there when it went out to the creditors.

Now they've added the following, quadruple the number of words. "Provided that notwithstanding anything in the foregoing to the contrary, the enforceability and applicability of the terms, including conditions, limitations, and/or exclusions of the Purdue insurance policies, including the MDT insurance policies. And thus, the rights or obligations of any of the insurance companies, the Debtors, or the trust, including the Master Distribution Trust, arising out of or under any Purdue insurance policy, including any MDT insurance policy, whether before or after

the effective date, are subject to the Bankruptcy Code and appliable law, including any actions or obligations of Debtors thereunder. The terms of the plan and the plan documents, the confirmation order, including findings," -- and they (indiscernible) -- "and any other ruling or order entered by the Bankruptcy Code.

So they have a proviso that says --

THE COURT: So -- so I understand that. So I think you are worried about the plan documents and any other orders or rulings, including in the future. Right?

MR. ANKER: And the past.

THE COURT: Okay.

MR. ANKER: Correct, Your Honor.

THE COURT: And I can understand that if, you know, the insurers didn't have notice of those issues. And maybe it should be dealt with that way. I'm not -- as far as I'm concerned, what they're asking me to find and rule on is what we're just been talking about for the last half hour or so. It's the proposed findings of fact and conclusions of law provisions that we've been discussing. And if they actually -- and I don't believe this is the case -- sought something from the Court that was not on notice to your clients, it couldn't be encompassed by that language because you wouldn't have notice of it. And if that's what needs to be clarified, it should be. I mean, I just don't -- that

should be an easy fix.

MR. ANKER: Your Honor, I think it is an easy fix if it's limited to the plan and the confirmation order. But let me -- what I'm looking at. First, I am concerned about the plan documents. I don't know what's going to be in them, when we're going to have an opportunity to look at them. But going back in time, it says under any order entered by the bankruptcy court without any temporary limitation, without any language about notice on us. That would include any order you entered at the outset of the case before the adversary --

THE COURT: I understand. But that has to be qualified by notice, obviously. I mean, Mr. Singer's point is insurers can't sit back and say everything that happens in a bankruptcy case on notice to us doesn't matter. You know, the normal rules of judicial estoppel, collateral estoppel, and law of the case just don't matter for insurers. That's just -- that's not right. But those principles all require notice. So that could be --

MR. ANKER: And, Your Honor, I think that can be fixed with a notice provision, adequate notice. I will say, Your Honor, there's a lot of law on whether findings in a contested matter are in fact res judicata for purposes of a future adversary. That's an issue we can brief with you later.

But I will say, Your Honor, let me go back to this provision for a moment. Why can't we have the language that was there when the plan went out that the creditors wrote it on? This is a last second change.

THE COURT: But it's not a last second change. You all have been able to blackline the proposed order, for example. I mean, you -- as you said, you and Ms. Grim and Mr. Singer have been living these issues in multiple cases. You know the caselaw. You know the issues. This is not really a surprise here. And if you just have that language, then you have the potential for the coverage exclusions. And I don't think that's right given the record as far as the transfer.

And I think, although I will double check the caselaw with regard to the pay first and consent points --

MR. ANKER: Your Honor, this is not a pay -- I want to make sure we're drawing issues --

THE COURT: I understand. But that's why I don't think it really matters. And, frankly, I don't think the consent really matters, either. I mean, to me, if the claims are being settled, they will only be settled in this context. They will be settled for a lot worse in some other context. So what -- the deletion of this language would mean that the insurers could go -- could raise this whole issue, that we've had six days of trial and two days of oral

argument on as to whether the settlement is proper or not all over again. That just doesn't make sense.

MR. ANKER: Your Honor --

THE COURT: And I think the underlying principle is right, that in bankruptcy it's a collective proceeding. The insurers' rights are to object on the context of the collective proceeding. And if they really believed that these settlements were on their backs properly or improperly, they would have objected. They would have raised their voice. And they've just not.

MR. ANKER: So, Your Honor --

THE COURT: I mean, their issues are much more narrow, primarily. They're basically saying we didn't cover this sort of stuff. And the settlement doesn't say they did. This is not a -- this is very different from a case where they're asking for a finding that there's X degree of insurance coverage that actually applies to these claims. They're not seeking that relief. They just want to prevent settlements that if I approve them, I will find are reasonable on notice to the insurers, the insurers coming back and saying no, we have to relitigate that whole thing. And to me that just is not right.

MR. ANKER: I understand Your Honor's position. Do I understand correctly that either we'll have the words "viewed collectively" added or at as clear to Your Honor

that this is not specific to -- is not a finding with respect to Rhodes --

THE COURT: It's to all the debtors. It says debtors, plural.

MR. ANKER: That's correct.

THE COURT: We're not allocating, you know, X to one debtor and Y to another. But at the same time, I don't -- I think that the language that insurers have proposed be stricken really should stay, because it's -- I think under these circumstances, isn't a settlement that is being proposed to be funded primarily by the insurers. In fact, the evidence suggests -- Mr. Huebner's presentation today was exclusive of insurance. So that was on top. And so I think all things considered, I understand why the insurers haven't objected, because to them it's -- it actually ensures that, frankly, as much money as possible goes out to reduce their potential liability.

MR. ANKER: Your Honor, so I take it you believe the language should remain in Paragraph JJA. Does Your Honor have any questions about any of the other provisions that are --

THE COURT: Well, I don't really agree with them. I just think, again, I think there should be a reference to the withdrawal of the objections. That's fine. I think that's an important aspect of the record. And that may well

help you in your concern about precedent, although I don't think what we're dealing with here involves insurance of non-debtors being used to pay debtor obligations. But I think the objection should be noted and the withdrawal of objections and the lack of objections by any others.

MR. ANKER: Thank you, Your Honor.

THE COURT: Okay. Okay. And as far as the language in the plan itself, I mean, I think I've been clear. If the Debtors or the MDT try to alter the insurers' rights other than as set forth in the findings of fact or in the confirmation order itself or in the plan documents that you have, without due notice, you just can't -- that's not operative. That can't be operative.

MR. ANKER: Thank you, Your Honor.

THE COURT: I don't know how you word that. I imagine you'll probably come up with some language to cover that. But it's basically a fundamental principle. So even if you can't in the next day or so come up with that language, I think the record is clear that, you know, you can't have super-secret probation.

MR. ANKER: Thank you, Your Honor.

THE COURT: Okay. Okay. Thank all three of you. I do, that is.

MS. GRIM: Your Honor, may I have the opportunity to address a few of Mr. Anker's points?

THE COURT: Sure. I'm sorry. Go ahead.

MS. GRIM: On Mr. Anker's point as to why are we here, I just want to reiterate I think we've made it pretty clear that we're here because the insurers have made it clear that they seek to negate coverage solely based on the plan. And even if Mr. Anker agrees not to object to any aspect of the plan, that we need these findings to preserve the value of the MDT insurance rights.

Mr. Anker is correct and we agree, the recovery of proceeds is not a predicate to confirmation, but transfer of the insurance rights is a predicate. And the MDT's ability to access those rights without having the transfer itself or any other aspects of the plan vitiates coverage is also a predicate. And 1123(a)(5) preempts any policy provisions that may impede the Debtor's ability to implement this plan.

I also need to address Mr. Anker's suggestion that our firm, Gilbert, is seeking confirmation findings solely for precedent in other cases. Because, frankly --

THE COURT: Well, it wouldn't work anyways. So that's fine.

But I just want to -- again, can I go back to something? I am not aware of any other provision of the plan that -- other than what we've been talking about today, that affects the insurers' rights. Is there any? I'm not aware of any.

MS. GRIM: No, Your Honor. And I know certain insurers raised some concerns regarding -- I believe it was the definition of the MDT insurance rights or the schedule that listed certain policies that fall within that definition. We want to make clear the plan is not presupposing that those policies provide coverage for the opioid liabilities. You know, if any of these provisions give Mr. Anker heartburn, I think he's had a number of weeks now to raise them. We have addressed other concerns by other objecting insurers to clarify language, that we're not trying to do that.

So I think what you see is what you get here. We are seeking the findings that we are seeking.

THE COURT: All right.

MS. GRIM: And that's it.

THE COURT: Okay. All right. Thank you.

MS. GRIM: I do think it's important, if I could just have two minutes to address his due process arguments. And I don't want to drag this out, but I do think it's important to correct the record on this. We've had numerous conversations about the scope and intent of this provision, starting back on May 9th. The Ad Hoc Committee and the Debtors made clear from the get-go even with the old language that the intent was to preserve the same rights and obligations the insurers and debtors had under the policies

prepetition, but not to permit the insurers to limit or escape their coverage obligations based on any aspects of the plan for the Chapter 11 process. The insurers expressed a contrary view, and that's why revised the provision to begin with. So I think it's a little bit of a stretch to say that they were taken off guard. But even if they were -- and I'm not going to beat a dead horse on this because I think Your Honor made the point effectively -- what exactly have the insurers been deprived of? They've had the opportunity to object to the plan, to the confirmation order. We are here right now. They had the opportunity cross-examine witnesses during trial last week. And so any due process confers here being unfounded. And in fact, I believe we provided these confirmation order findings back on August 11th, which might have been before the Court even had them, although Debtor counsel can correct me on that. So, again, I just need to correct the record on that point.

Again, if Your Honor has any specific questions on the particular findings that were not already addressed, I'm happy to address those. But otherwise, I'll --

THE COURT: I don't think I do. I think you've gone through them.

MR. ANKER: Your Honor, this is Mr. Anker. I'm not going to reargue anything. I will say I assume that -- I note Your Honor is talking about working on language in

the next two days. I think we heard you loud and clear about the notice points and other points. I assume and will request that the Debtors furnish us with a copy of any revised confirmation order and plan documents so we can see them. And not formally settling the order, but so that we can see them and give our comments.

THE COURT: Absolutely. That's fine.

MR. ANKER: Thank you, Your Honor.

THE COURT: But again, as far as these proposed findings are concerned, except for the references to the withdrawal of the objection and there being no other objections and just the record being clear, the Debtors means Debtors, plural. I am actually comfortable with the language as proposed by the Debtors here. And that includes the release point, which is really tied into the settlement point which we discussed for a while.

MR. ANKER: Thank you, Your Honor.

THE COURT: Okay. All right.

The next thing for oral argument is time that I asked be reserved for the people who filed pro se objections to the plan, i.e. people who were not represented by lawyers who filed a timely objection to the plan. And I think two of those people have, as I understand from my clerks, either signed up for the Zoom for Government feed to address their objection or at least been given the information to do that

because of an earlier request to speak.

So the Debtors at this point don't have anyone to speak first. I think they reserve their rights to respond. But I am happy to hear from the individuals who did want to speak who filed a timely objection.

And I have down on my list Ms. McGaha. I hope I am pronouncing that right. I see you there. And you can go ahead, ma'am. I want to assure you and the other pro se objectors, even if they've not signed up to speak, that I have reviewed each of the plan objections. And actually, there were some statements by claimant that were not expressly couched as an objection, but they were riled around the time before the -- around and before the deadline for objecting to the plan. And I think actually Ms. McGaha's filing was one of those. But I was treating it as a plan objection. So I am happy to hear from you, ma'am.

MS. MCGAHA: Thank you, Your Honor. Before I -- my name is Carrie McGaha.

THE COURT: McGaha, okay.

MS. MCGAHA: McGaha.

THE COURT: Thank you. Okay.

MS. MCGAHA: You are not alone in mis pronouncing. Before I begin, I would like to ask a couple questions, if I may.

THE COURT: Okay.

MS. MCGAHA: I was confused on the voting. I've heard you all talk about it. And I was kind of under the -- it sounded to me -- now, I'm not a lawyer. I don't know if this is all like -- plus, I have a damaged mind from all the opiates I took, and I process information kind of like sand through a colander. And so -- but when I was reading the voting and the ballot, it seemed like if I voted no, I was kind of relinquishing some of my claim amount. Like I was almost ready to vote yes just to --

THE COURT: No.

MS. MCGAHA: And so I don't know if anyone else had that understanding, but --

THE COURT: No one has raised that point. And I think the ballot materials were clear. The vote was just a vote on the plan. It had nothing to do with whether your claim would be allowed or not.

MS. MCGAHA: Okay, thank you. Also, my broad understanding of this plan is that the new company will be able to -- is going to continue the sale of OxyContin and partial opiates, opiate antagonists, and other drugs in order to fund abatement. Is that an improper understanding?

THE COURT: Well, it depends what you mean by the word continue. It will be under a very strict set of operating guidelines in the form of an injunction. It will have, as it has had during the whole course of this case, a

monitor. The first monitor I think is now the Health and Human Services Secretary. People of statute. It will have governance by representatives of, you know, the Claimants.

So your answer is -- again, depends on how you define the word continuing. I think it's quite clear -- and the Debtors already have represented and the monitors have I think made this clear -- that whatever marketing practices that Purdue had that have been alleged to have flooded the country with opioids, of just its opioids, will not -- has not and will not be occurring, that the salesforce doesn't exist. There is no salesforce.

So if you've been listening to the trial over the last week or so, there is a balance for a regulated company like this that sells products that are inherently dangerous where nevertheless the regulators contend that they agree that they are not prohibited and can be used for proper purposes.

So it's not going to stop selling opioids, but it will not be selling them in a way that existed at least through the period that it was marketing them with the salesforce and trying to drive up prescriptions, et cetera.

MS. MCGAHA: Okay. Thank you. I appreciate the previous speakers and yourself for giving me an intro into what I feel like I need to say. I don't have a script written here. I'm just going to try to pray that the whole

experience speaks for me and anoints my words. Because this is all very confusing.

But who am I? I am someone who has had -- apparently I am the only on this list that's willing to speak to you today who has been through this. But I feel like I have relevant life experience with this. Because I did work around, as I have indicated in my submissions, drugs, you know, a lifetime ago. And I've never been in trouble with the law. I never did anything, you know, illegal and all that kind of stuff while I was working. But way back in the eighties, you know, somehow people didn't need long-acting opiates to get their relief from pain. And when the Oxycontin was introduced by Purdue onto the market and then pushed out by the doctors -- who I also hold highly responsible, because one can't function without the other. That having taken these drugs for over 15 years and survived, those long-acting opiates act completely different than short-acting opiates.

And I know that there's a lot of testimony concerning the diversion, that that's why they formulated OxyContin the way they did, to prevent diversion, and it's not 100 percent -- or however they adulterate it or whatever. I don't know.

I don't have a lot of experience with the illegal, incarcerated, all that kind of stuff, but having taken those

drugs, when you're taking those long-acting drugs for chronic pain -- and I'm not talking about acute pain -- I think that these drugs are miracles to help people with acute pain. But these long-acting drugs, they take away your individual ability to kind of manage your own pain.

You know, used to it was as-needed for pain. Once you get over that, you know, three to -- three days to 10 days of post-op or whatever the injury, or whatever it is, and you kind of start to heal. You know, you should be decreasing the usage, and your pain should lessen.

And what they did to me was they just kind of -- and then they -- the doctors still give you the breakthrough pain pills, and so either way you're getting a long acting drug that's supposed to prevent you from abusing it, but then they still give you the short-acting drugs to help with the breakthrough pain because every time you take them and if you're on a constant level, your tolerance is constantly building up, and so you're just always building up this tolerance to the drug, and your tolerance to the pain goes way, way down.

And so it's a vicious snowball of psychic hell that happens on these drugs. And as a patient who still suffers from chronic pain, but the Lord really helped me in dealing with it, the -- see, this is the sand going through the colander. I just lost my thought, but I do have a few

notes here.

It's the risk of reinjury. That's what I was going to say. When you're taking those drugs just constant long term, especially for chronic pain that you really need to address in non-pharmaceutical ways if possible, which I think the introduction of these drugs pushed like they were onto the market prevented a lot of development of the alternatives that, you know, could've been really developed over the past 20 years rather than just relying on all these opiates and then, you know, we're in the situation that we're in.

But when you take opiates for pain and injury, like I have a really bad back, and so it does take away that (indiscernible) of the pain, and so you think you can do stuff that you really shouldn't do it. You know, you are feeling less pain. It's really not that -- I never felt no pain unless I was unconscious, but your pain is -- whatever happens to you, you do -- you do more than you really should do. You don't allow yourself to heal so that you -- and you know, eventually heal fully, and I'm going on and on.

THE COURT: No, no. I think I understand your point.

MS. MCGAHA: Okay. I'm sorry. I'm going to try to keep this short because I don't want to cost anyone --

THE COURT: That's fine.

MS. MCGAHA: -- any more money than necessary. You guys get paid beaucoups of money, so I don't want to take away from --

THE COURT: Well, I don't get paid by the hour, so you can go ahead.

MS. MCGAHA: Okay. I think it delays healing, anyway, the OxyContin especially.

I feel like the way that that was approved by the FDA and all of the experts that have -- not all but a lot of experts that approved these -- that regulate and approve these decisions, I -- I mean, I just really kind of -- I don't understand it because OxyContin -- no one should really need constant opiate of OxyContin if they're still going to get the short-acting drugs. I mean, it just doesn't make sense to me.

But I think I tried to make that point in my submission also, that there's a symbiotic relationship between the healthcare system and the pharmaceutical industry. And it's like hand in glove, and the -- all these people out here would not have been prescribed these drugs if the doctors hadn't have been, you know, benefiting somehow.

And that, I feel like, is kind of a missing link or whatever in this plan is that it -- I know this is a pharmaceutical bankruptcy and all this kind of stuff, and I

just hope that whoever, you know, the state leaders or whoever gets to introduce the solutions or decide how the money's spent in each state remembers that people out here like myself in, you know, Podunk USA where you have to drive an hour just to get, you know, anywhere, and if you want to go to a good -- a really good doctor, you're going to drive three hours.

And so a lot of the solutions that I've outlined in my submissions are alternatives that I personally have been trying to use some of them on my own, but if they'd have been more available, you know, years ago, if this had not been offered as a solution, I would not have gone out on the street and looked for illegal drugs to ease my pain.

I would've had to -- I mean, I was the type of person -- I would've done what I -- you know, what the doctor recommended, and I relied on those doctors to put my best interests at heart and to, you know, follow their Hippocratic Oath and not just get the country addicted to opiates like that's the only solution.

I mean, you've got these task forces who know all of this. All these doctors, they know this. But down here in these -- you know, out here in no man's land, it's a different world, and the way that they're doing the funding of the abatement programs, you know, and a lot of this, it is based on population and the MMEs.

And I fear that there's just going to be these huge bureaucracies of these agencies who are going to -- you know, it's all going to funnel through. And by the time it gets down on the ground to the people that really need it, there's not going to be very much left, and I know there's all sorts of formulas that they go by and everything, and that's kind of necessary. But from where I'm standing, that's just what I see, and that's what happens in rural areas.

The drug-induced decline that we experienced over the years, you know, people leave. And they go to nice areas, the big city where, you know, those places, their population grows, and they get more money, and people leave here because, you know, less money. And so it's just kind of -- the problem gets bigger, and it's all because of the drugs. And --

THE COURT: Okay.

MS. MCGAHA: I just wanted to say also that on the unit dose thing, I tried to describe how that would've helped me, and I feel like if they're going to continue to sell especially OxyContin -- but I feel like all narcotics should be in like a card.

I don't know if you're familiar with Accutane, but it's a drug, and it's sold on a card so the you can see, okay, I took that. You don't want to overdo it. You know,

or birth control pills. You can see when you took it and, you know, how many you took.

And that was one of my problems because for a long time, I was on fentanyl patches. I had 100 microgram fentanyl patch every 48 hours, and I was taking 120 Dilaudid a month along with it, and it went on for years. And it was either fentanyl or OxyContin along with the Dilaudid or other drugs.

And so the doctors that prescribe these and the doctors that are in the Sackler family and executives with the pharmaceutical company, you know, they're uniquely trained and credentialed to know the pharmacology and the human anatomy and how all this kind of interacts. And you know, they should've known the history of opium in this country and, you know, for hundreds of years, the addiction that can happen from it.

But the side effects, you know, you get memory loss and confusion, and then you combine that with Valium or whatever, and it's just even worse. And so I can just remember, I mean, you're looking down the barrel of a bottle of pills, and you can't tell how many are in there, and you're in pain. You're suffering and you're vulnerable, and you know, we're depending on the doctor to not give us something that really is going to harm us.

But when you're in that situation, and I was the

only one that could manage my drugs. I was like the healthcare drug expert in my family. And you know, I didn't do a very good job. There was never a time that I ever diverted my drugs or mis -- abused my drugs or did anything like that, but there were times that I made my mistakes, and one of those times caused me to almost die, and my children found me. And you know, they were traumatized by that, and you know, they probably should've filed a claim for all of the trauma that they went through, but that's beside the point.

But the diversion that the Sacklers talk about when they testified, like that's the biggest problem, which I get that that is a big problem in this country. In fact, before I even filed this claim, I had written letters to my governor, and the attorney general, and my local sheriff kind of similar to the things that I've written in my submissions because I felt like the -- that's what I felt like God was trying to tell me what to do.

But they kept talking about diversion. In this case, you're only going to get paid money as a personal injury person if you have proof, you know, medical records and pharmacy records that you actually took these drugs, from my understanding of it.

And so -- but it seems like all of these abatement programs and a lot of the talk that the Sacklers had was all

about diversion, and they kept mentioning, you know, heroin was on the rise anyway, and kind of like it was inevitable that opiates were going to be a crisis, and if they knew heroin was already on the rise, why they thought introducing OxyContin and pushing all these drugs out onto the market would be a great solution, I don't know.

I think that's negligence, and I think not putting those drugs, knowing the side effects of those drugs on the patients taking them and expecting those people to manage the consumption of those drugs -- when you go in the hospital, you know, the nurses chart every pill. They count every pill. They keep up with every pill like it's some kind of piece of gold or something. But if you're a patient, you're supposed to manage all this on your own while you're suffering, and suffering the side effects? It just seems like negligence to me.

And the quantities were just outrageous. And I've had multiple surgeries over my lifetime, and I do know what -- the quantities and how drugs were prescribed in the '80s, and somehow people managed to recover from surgery, and recovery from injury, and recover from all sorts of things without being -- having it necessary to be put on long-acting opiates. And that's my biggest concern --

THE COURT: Right.

MS. MCGAHA: -- is (indiscernible).

THE COURT: I hate to do this, Ms. McGaha, but I think -- I read your objection. I think we're now circling back to things we've already discussed, and --

MS. MCGAHA: Okay.

THE COURT: -- you discussed them quite clearly, so I'm going to --

MS. MCGAHA: Okay.

THE COURT: -- thank you.

I want to make two observations. First, the abatement programs under this plan are not locked in stone, except for the fact that the money has to be used for abatement, so my hope is -- and I believe this is the hope of the states, and local governments, and hospitals that had a hand in putting together these abatement and treatment programs is that people learn as they go along, and part of the learning is going to come from the reports that have to be filed in this case as to effectiveness of treatment and the effectiveness of the abatement programs, how to do this best.

And I think -- it is clear to me at least that this -- that that task is a complicated one, but it includes the ability of people like yourself, people who run community groups, who run associations of both people who themselves have suffered from opioid use disorder and their relatives to have input, to speak to their councilmen, their

mayor, their governor, and the local health authorities, to give them their input. And I think that's important, obviously.

So this is not -- you know, I think this money is to come in over a substantial amount of time, and it is not going to -- if I confirm the plan -- always going to be a 2021 abatement program. We'll learn from it, and so your observations are important there.

MS. MCGAHA: Thank you, Your Honor. I appreciate the opportunity to voice my concerns and speak to the Court, and I really appreciate all your time and effort.

THE COURT: Okay. Thank you.

All right. I don't know if -- I just have on my list Ms. McGaha, but I don't know if anyone else who filed a timely objection as a pro se wants to speak. Otherwise, I guess I'll hear from the Debtor's counsel.

Okay. Oh, I think there is one other person. Ms. Eck?

MS. ECKE: Yes. Judge Drain, please, please forgive the unmuting, the untimely unmuting of my computer.

THE COURT: Oh, that was -- that's --

MS. ECKE: And the --

THE COURT: That's fine, ma'am. That was for like one tenth of a second, and I'm sure Mr. Singer has experienced much worse over the pandemic on various Zoom

calls that he was on, including probably dogs and children and all sorts of things, so don't worry about that.

MS. ECKE: Thank you. Anyway, I'm going to --

THE COURT: And Ms. Eck, I don't know if you want -- if you want to be on the screen. You don't have to be, but I'm not able to see you. If you don't want to be on the screen, that's fine.

MS. ECKE: It's okay. I just don't know how to do it.

THE COURT: Oh, okay.

MS. ECKE: Any way.

THE COURT: The person who's running this in the courtroom -- my tech person says your camera is actually covered by something.

MS. ECKE: Oh. Oh, oh, oh. I got it. That's still not -- that's the lights above.

THE COURT: Yeah. It has to be pointed --

MS. ECKE: It's not helping.

THE COURT: Anyway, it's all right.

MS. ECKE: Okay. Anyway, my objection to the restructuring of Purdue Pharma LP et al, case number 19-23649.

Dear Judge Drain, I began researching OxyContin, and its generative derivatives as my son prescribe -- my son's doctor prescribed this to him at an early age. After

my dearest firstborn died December 17th, 2015, nine days after my birthday on December 8th, and nine days bore my poor, deaf, Vietnam veteran's ex-husband's birthday on December 26th in 2015, I was immediately awoken to learn about this overprescribed drug.

At first when I started to -- trying to write a motion for claim payment in early November of 2020, I spilled out my heart to all the following individuals in this instance. This was an extreme, extreme tragedy, as many of the attorneys, including Marshall Huebner of Davis Polk & Wardwell; Layn Phillips of Corona Del Mar, California; Kenneth Feinberg of Washington DC, and many others, including Ryan Hampton, Blue Cross Blue Shield Association, CVS Caremark Part D Services LLC; and Health LLC; Cheryl Juaire, T -- L-S --LTS Lohmann Therapy Systems Corporation, Pension Benefit Guaranty Corporation, Walter Lee Salmons, Kara Trainor, West Boca Medical Center; the official committee of unsecured creditors, care of Akin Gump Strauss Hauer & Feld LLP; Bank of America Tower, One Bryant Park, New York, New York 10036.

Attention Attorney Edan Lisovicz and Attorney Arik Preis who are in my letter dated December 13th, 2020. My letter to Judge Drain July 30th, 2020 you can read in full online. Please also view my motion for claim payment dated December 15th, 2020.

Previously, I had begged the Attorney General of Connecticut, George Jepsen, presiding attorney general for Connecticut from 2011 to 2019 for help for the mothers of Connecticut who had lost their children due to this crisis. I had also contacted the Connecticut Department of Health previously and received no help from anyone -- or from anyone personally or for my group of bereaved mothers.

Gloria (indiscernible), head of Consumer Affairs for Attorney George Jepsen of Connecticut who was in office from 2011 to 2019 and Sandra Arenas, the new head of Consumer Affairs for Attorney George -- Attorney General William Tong of Connecticut from January 1st, 2019 had already told me that the state only sues for the state, not for the individuals.

At this point in my life, I feel in my opinion that I have been used and abused by the state of Connecticut. I was born in the great country of America and always thought that I would receive help if I asked for it. I'm really hurt by everyone's indifference to my personal tragedy and the personal tragedies of many others.

Attorney James I. McClammy of Davis, Polk & Wardwell, the attorneys who are defending Purdue Pharma LP's actions first contacted me via e-mail, later by Jacquelyn Knudson of Davis Polk & Wardwell on December 3rd, 2020 via telephone. Then I called Attorney Knudson on December 7th,

2020. Attorney James I. McClammy wrote a letter dated December 8th, 2020 and mail it to me December 9th, 2020 stating that I had talked to Attorney Knudson on December 7th, 2020.

My previous letter to you, Judge Drain, was dated December 15th, 2020. That was my motion for claim payment. On February 24th, 2019, there was a segment on television of 60 Minutes entitled "Did the FDA Ignite the Opioid Epidemic? A drug manufacturer Denounces his own industry and explains to 60 minutes how a label change by the FDA expanded the use of opioids" in which correspondent Bill Whitaker talks to Ed Thompson, a Pennsylvania drug manufactures -- manufacturer who tells about his lawsuit of the FDA at the beginning of the OxyContin crisis.

60 Minutes had to petition the courts of West Virginia to get the information to issue this segment of the television program since according to 60 Minutes, the drug manufacturers and the FDA were holding secret meetings about the labeling of the drug.

Ed Thompson states that OxyContin was on the market since 1990, and the FDA new how potent the drug was. Ed Thompson explains how a high-dose long-duration opioid kills people when there was no scientific evidence to condone long-term use of opioids. Ed Thompson had stopped the high-potency, high-dose drugs that he manufactured in

1962.

Therefore, in my opinion, I don't agree with the declaration of Jonathan Greville White on page 4, Article 9, which states "Beacon Trust, one of the general trusts is the ultimate owner of the 50 percent limited partner Purdue Pharma LP, Purdue, which holds for the benefit of Side A an entity for the benefit of Raymond Sackler or Side B is the ultimate owner of the blankie of the Purdue equity.

"Beacon Trust was settled in 1993 by Mortimer D. Sackler, several years before OxyContin was launched. I am the director of Heathridge Trust Company Limited, which is a trustee of the Beacon Trust Company Limited, which is a trustee of the Beacon Trust.

"Since the death of Mortimer D. Sackler in 2019, the Beacon Trust has been an irrevocable trust of the benefit of Theresa Sackler, Dr. Mortimer D. Sackler's issue, and various charitable beneficiaries. The Beacon Trust instrument provides that its trustee holds the Beacon Trust funds in its discretion with prior written consent of the special trustees to pay income and/or capital to or for the benefit of one or more Dr. Mortimer D. Sackler's spouse, defendants, and/or charitable foundations."

Later, Jonathan Greville White states, "Each of these general trusts is an irrevocable discretionary trust. Their beneficiaries are typically to the Sackler, and the

issue of Dr. Mortimer D. Sackler. One general trust confers upon Theresa Sackler a life interest over the income that is generated each year."

According to LexisNexis and the Bloomberg Law on December 17th, 2019 at 6:09 p.m., Samantha Stokes wrote, "Purdue Pharma has paid several big law firms for the legal work on behalf of the Sackler family members, including Debevoise, McDermott and Norton Rose, according to new documents" and "Purdue Pharma, the embattled pharmaceutical company at the center of the opioid crisis has paid more than 17.5 million in legal fees on behalf of the Sackler family to more than a dozen law firms, according to the new documents filed in the company's bankruptcy. Debevoise & Plimpton was paid the majority of the legal spend, more than 11.4 million for its legal work for the Sacklers from the first half of 2018 through 2018 through early 2019 according to an audit filed Monday in the U.S. Bankruptcy Court in the Southern District of New York where the company is undergoing Chapter 11 restructuring."

If the Sackler family used the money that they spent on attorneys instead of for themselves -- instead of themselves, all parties would be happier.

As far as my understanding from Arik Preis, partner at Akin Gump who called me at 6:30 p.m. on July 30th, 2021 after I sent my original July 30th letter off and

will object if I give you actual numbers for our conversation dated Friday, July 30th, 2021, there are four main sides of this restructuring equation, one consisting of the official committee of unsecured creditors and all the others in my previous letter dated December 13th, 2020; another side consisting of a few brave pro se advocates and me who are supposedly supposed to get virtually nothing; an additional side of states with attorney generals, municipalities, and an abundance of lawyers handling Chapter 11 in case number 19-234649, getting the majority of at least three quarters of the funds, which may or may not help injured victims directly from an 18-year trust. And finally, the fourth side consisting of the Sackler family who is trying to use their ill-gotten fortune off the backs of heartbroken people who lost their loved ones.

On July 19, 2021, Attorney William -- Attorney General William Hong filed objections to, "Bankruptcy plan with legal shields for the Sackler family." Therefore, I'm asking the Honorable Judge Drain for Rule number 3008-1, reconsideration of claims. We need to object to the restructuring of Perdue Pharma and initiate an entirely new vote for the mothers, fathers, brothers, sisters, and all who are now living a life of heartache, depression, and loneliness from this drug that had been evaluated years earlier by the Perdue Corporation and hidden from the public

that highly addictive and shoved under the proverbial rug.

Are the Sacklers and their lawyers at Davis Polk and Wardwell willing to clone my dear son or bring him back to help me in my disabled old feeble age? I don't think so. thank you, Your Honor.

THE COURT: All right. And thank you, Ms. Ecke. I will say just one point, and that is that it obviously took a lot of courage to say what you've said in this setting. I some people will disagree with it, and I think there are some points that just weren't right like Davis Polk being the Sacklers' lawyers, which is not true. But on the other hand, what comes through very clearly is I think the main point of your objection and your statement, which is that this company's product or products caused tremendous pain and harm.

And it is turning over all of its assets under this plan in a way that the parties interested in the case have determined best resolves that pain and harm knowing full well that it never can resolve that pain and harm, and that is something that will never be fully resolved or even partially resolved.

THE COURT: All right. We had reserved time at the end of this argument for miscellaneous matters, including further discussion of the release language in the plan. I don't know whether there is a remaining argument on

the DMP issues or not.

MR. GLEIT: Your Honor, Jeff Gleit of Sullivan and Worcester. I have a -- just a brief statement that I'd like to make in connection with it, and I'm available to answer any questions you have.

THE COURT: Okay. That's fine.

MR. GLEIT: Okay. Thank you, Your Honor. On Monday morning, Ms. Duvani had stated that the Debtors, the AHC, and the DMPs reached a settlement in connection with substantially all of the DMPs objections. The plan with one narrow exception, that is the objection that the insured injunction improperly deprived certain DMPs of their rights as additional insureds under the DMVT insurance policies. With regard to that objection, the DMPs have agreed to rest on their papers, which can be found at docket 3306.

I'd like to make just one brief point, which is not in my firm's reply brief but is addressed in Davis Polk's brief, which is at docket number 3461 at paragraph 206. As we've heard throughout this confirmation hearing, the plan contains multiple settlements and transactions, all of which must be approved for this plan to be consummated. As I'm sure Your Honor's aware, the MVT insurance -- insurer injunction is one of these essential and integrated provisions.

The Debtor's insurance policies, the rights to

which are being transferred to the master disbursement trust, provide a substantial source of value for the abatement distributions and the distributions the personal injury claimants contemplated to be made under the plan. The MVT insured injunction is essential to preserving and ultimately realizing the value. It is integral to the plan, and its applicability to the DMPs is necessary for this plan to be consummated.

Absent questions from Your Honor, I will not repeat the arguments which are fully set forth in the briefs of my firm, Davis Polk's firm -- the Davis Polk firm, and the AHC which are located at docket numbers 3506, 3461, and 3465 respectively. I do want to, though, note to Your Honor that there was a joint stipulation between the Debtors and the DMPs which was filed at docket number 3612, which contains excerpts from the relevant insurance provisions in the parties' contracts, which the Court may find helpful.

So unless Your Honor has questions, I'm happy to cede the Zoom podium.

THE COURT: Okay. That's fine. Thank you.

Do the Debtors have any rebuttal, or are they going to rest on their papers too?

MR. GLEIT: I think you mean the DMPs. I'm (indiscernible) counsel.

THE COURT: I'm sorry. Excuse me. The DMPs.

WOMAN: No, Your Honor. We rest on our papers.

THE COURT: Okay. Very well. All right. So I had a chance to review what I think are the changes that were included in the ninth amended plan that was the subject of discussion at the beginning of this oral argument this morning. I'm assuming that other parties have too at this point. I don't know if there are further changes in it, but I said I would give parties who were objecting to the breadth of the third party injunction release and the plan an opportunity to comment on the revisions and as to whether there was still, in light of those revisions, an issue as to the breadth of the release.

And obviously this is without prejudice to objectors' other arguments regarding the release, which I've heard and will be considering. This just goes to the release language. And I don't know if there's been further discussion and agreement beyond what was submitted this morning, so maybe I should ask that question first and then I'll hear from objecting parties. And I see the Debtor's counsel on the screen, Mr. Vonnegut. Have there been any further changes from what was filed this morning or last night?

MR. VONNEGUT: Good afternoon, Your Honor. For the record, Eli Vonnegut of Davis Polk and Wardwell. There have been no further revisions to the drafting of the

releases. However, we have had several conversations with Mr. Edmunds of Maryland that I think have been helpful in clarifying his understanding of how the releases function. And so I'm happy to walk Your Honor and other parties through those issues so that hopefully everybody else can share that understanding, if that would be helpful.

THE COURT: Okay. All right. That's fine.

MR. VONNEGUT: Okay. So a number of the questions about the releases that we've gotten this week from Mr. Edmunds I think are premised on some misunderstandings of how they work, so I'd just like to clarify a couple of foundational issues about what is in and what is out.

First, there have been a number of references to conduct that is described as unlawful asking whether claims arising from unlawful conduct would not be released. That one is very simple. The very first provision of excluded claims is criminal claims. Criminal claims are not being released, period, full stop. What is a little bit harder and what we have had extensive discussions with Mr. Edmunds about is capacity limitations.

So a variety of parties that received revisions under the plan only received those releases for claims against them in their specified capacities. So for instance, with respect to related parties of the Debtor that Mr. Edmunds raised, there were a couple of questions along

the lines of if some participant in the pharmaceutical industry had a relationship with the Debtor, do they become released for all claims against them, and the answer is no. The only claims that are released that party are claims against them in their capacity with which they were related to the Debtor.

A similar limitation, which we've discussed before but I think it bears emphasis because it's important, is that parties are only released for claims that relate to the Debtor. So they have to be tied to the Debtor. And again, it's not the case that if you have one claim against you released because it is related to the Debtor that other claims become released. You are only released in that limited capacity. So if a party had one relationship with the Debtor and then independent conduct, claims arising from the independent conduct is not released.

Now, the most important issue that we discussed with Mr. Edmunds that I think is important to emphasize is a revision that we made in response to Your Honor's commentary on Monday's hearing regarding the settlement with the distributors, manufacturers, and pharmacies, the DMPs. So we had some colloquy about whether those parties are included in the third-party releases. The answer is no, and we've now made that very clear in Section 10.6B, which is the third-party release provision as distinct from the

releases of claims held by the Debtors.

So we've now added to Section 10.6B a footnote that says co-defendants are not released parties under Section 10.6B of the plan. This is important. As we discussed with Mr. Edmunds, we believe that this addresses a lot of the concerns and the confusion that have been raised regarding the scope of the releases here. "Co-defendant" is a very broad term. It includes any party that is a defendant in a pending opioid action commenced as of the effective date. It also includes any holder of a co-defendant claim. And a holder of a co-defendant claim is effectively anybody who has asserted or might assert a claim against the Debtors to attempt to recoup their own costs in opioid-related litigation.

So if you zoom back out, effectively the term is what it sounds like. Co-defendants in the opioid litigation are excluded wholly from the third-party releases. And the only exclusions to that are --

MAN: (indiscernible)

THE COURT: You can go ahead.

MR. VONNEGUT: Excuse me. The only exceptions to that are current a informer, officers, directors, authorized agents, and employees of the Debtors. So I'm hopeful that that helps, Your Honor. I am cognizant that these are complex, and we've been fielding many, many questions as

quickly as we can.

THE COURT: Okay. All right. Thank you.

MR. VONNEGUT: Of course.

THE COURT: I have some comments, but I'm happy to hear from other parties first. Maybe they have the same comments.

MAN: Your Honor, good afternoon, Your Honor. Sorry, Brian. Do you want to go first, or you want me to go first?

MR. VONNEGUT: Oh, one more point that I forgot to clarify. Mr. Edmunds also raised the question of whether the releases might complicate efforts to obtain discovery in unrelated litigation. The answer is that they will not. We received a proposed addition to the plan from Mr. Edmunds that we're working on, but recipients of releases are still obligated to comply with subpoenas and other discovery. We're not attempting to relieve them of that obligation. And that will be made clear in the next amended plan.

THE COURT: Okay. I know you both spoke at the same time and then neither of you spoke, so I'll just look to Mr. Edmunds first.

MR. EDMUNDS: Thank you, Your Honor. I'll be brief. I think that we've had this -- Mr. Vonnegut and Mr. Huebner and I in various, I guess, combinations have had this discussion for quite some time. The issue -- and I'm

not sure that Mr. Vonnegut's presentation exactly resolves it as we agreed over the lunch hour that we took when Mr. Huebner, Mr. Vonnegut and I were on the call to resolve it.

But let me just -- the issue narrowly that I have been raising and on behalf of other objecting states have been raising is that the -- is the same one that you went over Monday, which is that the definition of related parties, specifically Debtor-related parties who were released under 10.6B is very broad. And we -- the position, our position, is that those releases are inappropriate if they release people who independently, who are not closely connected with the Debtors, those who have independently engaged in conduct, including conduct that involves the marking and sale of produced opioids. There is -- so there has been --

THE COURT: Can I -- I'm sorry to interrupt just for a second. 10.6D, is that the Debtor release or the third-party release?

MR. EDMUNDS: It's B, Your Honor, and it's the Debtor release. It's the --

MAN: 10.6B is third-party. The Debtor release is 10.6A, Your Honor.

THE COURT: All right. So --

MR. EDMUNDS: Right.

THE COURT: -- I think it's important to keep the

-- so we're talking about the third-party release?

MR. EDMUNDS: Yes, we're talking about the third-party release --

THE COURT: All right.

MR. EDMUNDS: -- of the Debtor-related parties, and I misunderstood your question.

THE COURT: Right. Okay.

MR. EDMUNDS: The third-party release of claims against Debtor-related parties --

THE COURT: Right.

MR. EDMUNDS: -- which is the issue here. And that could be very broad, and that's as literally incorporated as it's broad. There is a new footnote, and this is a new understanding that I understood Mr. Huebner was going to clarify this afternoon on the record, which is that those actors, the related parties who, in their own right, engaged in the same misconduct related to Purdue should not be released and are released, they are arguably partially incorporated in -- if you go through a string of definitions, the definition of co-defendants.

And the definition of co-defendants then incorporates the holders of co-defendant claims under which you can make an argument that those who participated in Perdue's opioid-related conduct are, in fact, released by the footnote.

MAN: One issue I just want to clarify, the footnote makes clear that co-defendants are not released. That is the purpose of the footnote. It is not expanding in any way.

MR. EDMUNDS: I may have miss -- I may have omitted a "not", but I think that's sort of the reason that this is getting difficult. We're going through multiple layers of --

THE COURT: Well, if the intent is that they don't have that release, then the parties can make that clear. And that's what I'm hearing, at least.

MR. EDMUNDS: I think that we have agreed. I thought it was going to be made clearer on the record. I think that there is still an issue that needs to be that -- and Mr. Vonnegut and I have been discussing this by email during the hearing this afternoon. I think that there is something -- some work that we still need to do, and I think that we will be able to do that.

But I wanted to -- we may not be arguing before the Court again on this issue, so I wanted to explain overall what the issue is that we are trying to resolve, and that is that wrongdoers shouldn't be released from state police power claims when they've not contributed to the plan. And I think that we're -- there is an agreement in principle as to that. I think we need to make sure that the

language is -- it incorporates that and is clear. And clear because I think we'll face interpretive questions over that if it's not in implementing our police powers. So --

THE COURT: Well --

MR. EDMUNDS: -- that's the concern, and I think --

THE COURT: All right.

MR. EDMUNDS: -- we can work on that.

THE COURT: I want to be clear, though. I think that I heard from Mr. Vonnegut that there was an agreement generally on that point. But on the other hand there are certain causes of action that the Debtor has, such as, you know, failed to supervise vicarious liability, veil-piercing alter ego, things like that where a discharge of the Debtor, if someone was acting just without wrongdoing, you know, without their own knowledge of unlawful conduct, really shouldn't be a back door to violate the bankruptcy discharge or the injunction from those who were contributing.

So that's where I draw the line. And it really should go truly to their own independent wrongful conduct, not conduct as, you know, an employee of the Debtor, just as an employee of the Debtor. And this is similar to the language in Section 524(g)(4), you know, which provides for an injunction of claims related to the Debtor based on the third-party's involvement in the management of the Debtor or

predecessor to the Debtor, or services as an officer or director or employee.

So those types of claims really shouldn't -- I view -- and there is going to be some line-drawing here that you can't do -- inevitably, there might be someone who gets sued where you're not sure until you actually look at the facts carefully, which is why I think they have the provision to come back here. And I've done this once in another case, and I found that the injunction actually applied in one situation but not in another, and that may well happen. But I think if there is separate independent wrongdoing that's short of being illegal, a crime, which no one is protected from by a co-defendant, we do carve it out.

And that would cover any -- you know, any third-party like, I don't know, some pharmacy chain that Perdue dealt with. But if you're talking about officers, directors, employees, you know, the case law is pretty clear that you can't, through the back door, go after them just because they worked for a company that you would have a claim against. So I hope that provides some guidance to you all.

MR. EDMUNDS: It does, Your Honor, and that's not the issue. The issue is to take, for example, the seven, I think, entities identified on the -- actually, entities or individuals identified on the excluded party list, or at

least the corporate ones that are there. Those are actors who engaged in Perdue's marketing, but they're not employees. They're not close to the company. They're not of the kind that you're mentioning.

And the idea is just to make sure that these releases do not categorically apply to what Mr. Uzzi referred to this morning as, you know, the undiscovered McKenzie.

THE COURT: Right. If -- obviously, if they have engaged in their own separate wrongdoing, and I think the Debtors -- I think if I heard Mr. Vonnegut correctly, the Debtors agree with you on that. It's just a matter of making the language clear.

MR. EDMUNDS: Right. I think that's the case.

MR. VONNEGUT: That's correct, Your Honor.

THE COURT: Okay.

MR. VONNEGUT: Unsurprisingly, we think you've got it exactly right. The independent conduct is not released. Co-defendants, period, full stop, do not get third-party releases.

THE COURT: Okay. All right. Okay. Should I have Mr. --

MR. EDMUNDS: Thank you, Your Honor.

THE COURT: Should I have Mr. Fogelman then?

MR. FOGELMAN: Thank you, Your Honor. Good

afternoon. This is Larry Fogelman on behalf of the United States. Your Honor, as you said while preserving all of our arguments set forth in our statement, the changes made overnight do not address the very issues the Court has raised throughout this hearing concerning the extraordinary overbreadth of the non-Debtor releases, including Your Honor's admonition that the non-Debtor releases should not include fraud concern non-opioid products. Let me explain.

First, the release in Section 10.7B still covers everything related to the Debtors, et al. The key language has not changed. The release includes all causes of action based on or relating to the Debtors, to the estates, or the Chapter 11 cases. That covers literally everything. Now, there is a carve-out to the extent that such of action "is based on such shareholder release parties actual and separate non-opioid actual misconduct".

But the definition of non-opioid actual misconduct is too narrow and does not clearly permit (indiscernible) concerning the other pharmaceutical products that the Debtors manufactured, including (indiscernible), as well as any other liabilities that could arise from owning and operating a pharmaceutical company, including police and regulatory claims. These could relate to state consumer protection statutes, state public nuisance laws, state environmental liabilities, state workplace safety laws,

state employment laws, state civil fraud claims, state fraud and contracting, any state ADA laws, state labor laws just to name a few examples.

THE COURT: So, could I interrupt?

MR. FOGELMAN: Specifically, Your Honor -- yeah.

THE COURT: Could I interrupt you? I had the same reaction, I have to confess, when I read the definition of non-opioid actual misconduct. I had two reactions. The first was I -- it seemed in clause 1 to take away what it gave at the beginning of clause 1. It says an action taken or not taken --

MR. FOGELMAN: I --

THE COURT: -- deliberately or recklessly in bad faith, and with actual knowledge. So reckless is not with actual knowledge, but so --

MR. FOGELMAN: That --

THE COURT: -- so it seems to take away language that arguably is there, but that I think it takes away. But more importantly, I have this point. And again, I am distinguishing between releases --

MAN: (indiscernible)

THE COURT: -- that a debtor can give and is giving here based on the Debtor's own analysis --

MAN: (indiscernible)

THE COURT: -- and I think everyone else's

analysis, as to the types of things that are listed in the language at the bottom of the next definition. Veil-piercing alter ego, agency vicarious liability, constructive notice, controlled personal liability, failure to supervise, or otherwise, with the exception of maybe of controlled personal liability. Those are all things that a debtor can release. Those are all -- there's no contention here that any individual, as to these non-opioid matters, has taken any action that would give rise to anything like this, and it's the Debtor's claim in the first place.

So I can see why one would want to make it clear in the Debtor release that this covers this type of conduct, and I don't have a problem with a strike-suit mechanism that has people -- if there's any doubt as to which side of the line it would fall on, bringing their suit here first. But I just -- I don't -- by definition, then, what we're talking about are not debtor claims, but third-parties claims. I just -- I'm not -- I don't see why we are covering them in a release for non-opioid conduct. I just don't -- why? There's no money being paid for that.

MS. MONAGHAN: Your Honor --

MR. FOGELMAN: Your Honor, I see both Ms. Monaghan and Mr. Uzzi looking like --

THE COURT: Right.

MR. FOGELMAN: -- they're ready to address that, so

I'll let them.

THE COURT: Right.

MS. MONAGHAN: I'll start, Your Honor, and then Mr. Uzzi can talk you through the language. So I don't want you to get the wrong idea about us. We were trying to draft a release that matched and mirrored the claims that have been made and not anything else. But even though claims for things like alter ego or vicarious liability are estate claims, the complaints here have frequently almost, you know, without exception raised claims on the theory that the former directors are vicariously and strictly liable for everything the company did.

THE COURT: Yeah, and I --

MS. MONAGHAN: So for example --

THE COURT: -- want to be clear. I don't have a problem with that as far as the language of a release, again tracking 524(g)(4). But we're talking now about non-opioid conduct, and --

MS. MONAGHAN: So let me turn to that.

THE COURT: -- if someone just, you know, says that director so-and-so or officer so-and-so, not a Sackler person, but just -- you know, or a Sackler I suppose, is liable for alter-ego, that's an estate claim, and it's being released by the estate. So I don't think -- I think other than having a mechanism to come to the court if you're going

to be asserting such a claim, you need anything more than the estate release to the Debtor release. And it just complicates things to include all this other stuff, and the alter-ego, etc.

Because what is the other stuff? It has to be something broader than that, that isn't an estate claim. And if it's for non-opioids, I don't see -- I mean, that's not been the focus of the case. It's not the basis for the settlement.

MS. MONAGHAN: So, Your Honor, we tried to draft the release in a way that addressed what we see as the fundamental problem with the non-opioid claims, which is that they are often opioid claims in disguise.

THE COURT: Well, all right, but that would be released. And so, you could say that, again, even if it's a opioid claim in disguise, it's released and you have to come to the Court if you're saying no, it's not in disguise, so you don't have litigation in Florida by the equivalent of the people in the Madoff case that kept saying, oh, it's not really a claim against the Madoff estate, it's something else.

MS. MONAGHAN: That, frankly, Your Honor, is what we were nervous about. The concept that the release extends to or does not extend to non-opioid related activity that a person actually undertakes, as opposed to something that's

just being attributed to them by virtue of their position as a director or shareholder.

THE COURT: All right.

MS. MONAGHAN: That is what we were trying to capture.

THE COURT: Okay, but --

MS. MONAGHAN: If the language doesn't do that, I think we can try to address.

THE COURT: I don't think -- see if I get this right. I don't think the way to address those concerns, which are legitimate ones, is to create a category of misfeasance that is excluded from the release. I think it's to create a category that's clearly covered by the Debtor release and to make it clear that you can't get around the settlement release, which is over opioid related claims, by creative pleading.

And ultimately, the Court that imposes the release should be the person that decides whether it's creative pleading or whether it's legitimate, and that is an issue. I mean, that, as I said in the case that I was referring to, the released party one on one point and lost on the other one and, frankly, the only one that had any value was the one they won on, so the party stopped suing.

But that plan didn't have the gatekeeping mechanism. They had to go down to Florida and they had an

extra, you know, two stages of litigation and expense before they finally got up here. But I think I'm happy with the gatekeeping mechanism like that if the gate is clear enough.

MR. UZZI: Your Honor, for the record, Gerard Uzzi of Milbank on behalf of the Raymond Sackler Family.

Look, we take a great deal of comfort with the gatekeeping mechanism. But it does matter what those gates are or what the gate that needs to go through, I guess, is the better, you know, metaphor.

But, you know, I do think, and I'd like to address for a moment, Your Honor, what these releases were always intended to pick up and whether it's supposed to be non-opioid -- excuse me -- only opioid liability or whether it was supposed to be broader than that.

And, Your Honor, I think we need to put these releases and this plan in the context of the facts and circumstances that brought this plan before the Court. And along those facts and circumstances are that we were approached by our counterparties -- so the creditors are large, the Debtors here, the fiduciaries -- to negotiate a release that was expressly supposed to be what we've said global peace, but, you know, is a complete and clean separation from these Debtors for all civil liability.

And that's in the record, Your Honor. It's in the record, Ms. Conroy --

THE COURT: It really isn't. I mean, David Sackler said it was for opioid liability. I know others said --

MR. UZZI: Well, he said --

THE COURT: -- they wanted global peace and they were going to rely on the lawyers. But look, the way this reads right now, non-opioid actual misconduct, if David Sackler -- it probably hasn't happened, but if he was in a car accident where he was negligent, it would be released because this doesn't cover negligence and that can't be right.

MR. UZZI: Well, I agree with that, Your Honor, but I don't believe it's -- I believe it can't be right, but I also don't believe that's what's picked up here. I mean, I don't -- if he's in a car accident, whether he's negligent or not --

THE COURT: Well, all right. If he was driving a company car.

MR. UZZI: I don't -- I don't believe, Your Honor, that is in the release as it relates to -- and it was Mr. Vonnegut said there are capacity limiters on both ends of the release, and there's a capacity limiter also with respect to the party who's granting the release.

And so, you know, a car accident in a company car that is the negligence of the individual person is not an

action taken in the capacity as the employee or the director or the shareholder or whatever it may be of the Debtors, and we're not trying to pick that up, Your Honor.

What we were trying to do here, Your Honor, what we were trying to do is we're trying to be responsive to the allegation of or maybe a concern that if there were facts that were later discovered that people would have said, hey, you know, that was conduct that should not have been released had we identified it today that it can be picked up here.

But if we listen to the testimony, Your Honor, and the questioning in this case -- I mean, you know, in the record, you know, as far as the investigation that --

THE COURT: Well, all right, I'm going to cut you short. I just think that would mean then that this language is, I think, too narrow. I understand your point. If someone is being sued just because they were a board member, all right, or just because they were an officer because it turned out that, you know, Purdue had negligently put together the formula for a non-opioid drug and they were just being sued as an officer or an employee, I think the Debtor release covers it.

But I also think there are probably claims that are not deliberate and with actual knowledge that legitimately someone's conduct might actually -- their own

conduct, not just conduct as an officer, but their own individual conduct would make them liable for that product, and we've done nothing about that hypothetical product in this case. So either this has to be really --

MR. FOGELMAN: Your Honor, can I give --

THE COURT: I mean, look, in the case --

MR. FOGELMAN: I'm sorry.

THE COURT: In the case law, the Second Circuit, including in the Quigley case and in the Manville IV case after the remand from the Supreme Court has really cabined the term derivative -- or actually expanded the term derivative from how it's normally used, which is a claim on behalf of the debtor or through the debtor to be something broader than that. But there's some limits to that, and it's not just based on, you know, actual knowledge of misconduct or bad faith or deliberate. It can be separate and independent conduct.

So I want to -- I think if you're going to cover non-opioid claims, it really needs to be something more than just Debtor related and really bad stuff.

MR. FOGELMAN: Can I -- sorry.

THE COURT: I mean, non-debtor related or really bad stuff, because you can have debtor-related stuff that I think would fall outside of the Second Circuit's admittedly broad definition of what a derivative claim is, is that

entitled to a release under the right circumstances under a plan, and I don't think this language does it.

And you can spend a lot of time dealing with that language or you can just carve out non-opioid conduct, except for conduct that is independent of one's acting under one's duty as an officer, director, or, you know, alter ego, veil piercing, et cetera, all of which is clearly derivative.

MR. FOGELMAN: Your Honor, that's all helpful, and I take to heart your comments that you believe that many of those claims, like the failure to supervise claim, would be a Debtor claim. That may be right, Your Honor, it may not be, depending upon how somebody would plead it.

I'd like to give you the example or one of the examples we're trying to solve for Your Honor, just to put it clearly out there. You've heard a lot about Adhansia in the questioning, and there's certainly a fair amount of inuendo about Adhansia and what the Sacklers involvement in Adhansia may have been. Adhansia was one of the search terms in the discovery that was taken.

There's been plenty of discovery and plenty of investigation about Adhansia. Adhansia was not approved by the FDA until all of the Sacklers were off the board. Adhansia wasn't launched until about the petition date.

And so, anything that relates to Adhansia, the

marketing and sale of Adhansia has been done by a Chapter 11 debtor with a pristine board under the supervision of this Court and under the supervision of a court-appointed monitor. Yet, yet there seems to be a pretty clear effort that people want to string something along and tie some sort of wrongful conduct to the Sacklers around Adhansia.

Now, if in fact, one of the Sacklers or one of the released parties, not just the Sacklers, did something with respect to Adhansia that was reckless or deliberate and intended to cause harm, of course, that should be carved out, Your Honor.

But these creative legal theories on trying to -- and I'm just picking Adhansia of one example of trying to bring the Sacklers back in and seems to be intended to get through a back door is what we're trying to solve for.

I'm not particularly wedded to how we solve for that, Your Honor, but it is something that either --

THE COURT: Again, to me, if people are suing them, I guess it's perfectly legitimate to not to want to have your clients even be sued for just being on the board, which includes getting information, or for being an officer.

But at the same time, you're putting the onus on the party suing to show not only that that isn't the case, but also that they acted deliberately, recklessly, or in some other standard that's not really tied, I think,

necessarily to a cause of action that would be independent. I think you might be trying, although I didn't like this language, to do that.

But I think a -- I mean, I just -- Adhansia is not a control person liability type of liability, right? It just isn't. That's not --

MR. FOGELMAN: I don't know, Your Honor. I mean, that's the problem that I have. I just -- I don't know.

THE COURT: But no one has asserted in this case, it's just can't be -- and they're not paying for it.

MR. FOGELMAN: No, but, Your Honor --

THE COURT: They're paying for peace of mind --

MR. FOGELMAN: Your Honor --

THE COURT: -- over something that I think they get peace of mind on just by the fact that they can't be sued as an officer and director.

MR. FOGELMAN: I think what we bargained for, Your Honor, is a complete separate from civil liability.

THE COURT: No, I don't --

MR. FOGELMAN: Now, I recognize --

THE COURT: The record doesn't show that. I'm sorry, the record just doesn't show that.

MR. FOGELMAN: I think that --

THE COURT: It doesn't show that.

MR. FOGELMAN: Your Honor --

THE COURT: It doesn't show that your clients bargained, for example, for release from CERCLA liability.

MR. FOGELMAN: It's (crosstalk).

THE COURT: It just doesn't.

MR. FOGELMAN: Your Honor, I mean, the settlement agreement and this plan speaks for itself as far as what the bargain was. The testimony of Miss Conroy made it clear that they wanted the peace premium, that they want to be --

THE COURT: Miss Conroy is a PI lawyer. She's not an environment lawyer. If the Sacklers have control group liability for an undiscovered Superfund site, I'm not giving them a release. It's just not going to happen period.

MR. FOGELMAN: But, Your Honor --

THE COURT: It's not going to happen period. It's not going to happen, and the lawyers should realize it. That's it. I've given you enough time to draft it. I'm telling you how it should be drafted now because you haven't' drafted it. I am not releasing them from a Superfund site, for example, which would be related to Purdue. That's not what this case is about. Had enough of this.

MR. FOGELMAN: Your Honor, we will --

THE COURT: And no court would affirm me if I did on appeal.

MR. FOGELMAN: Your Honor, they think --

THE COURT: It didn't even affirm -- it wouldn't have affirmed Judge Lifland if the interpretation was right as to the separate fraud of the insurance company to the asbestos claimants. Now the question wasn't that it was fraud; it's that it was separate. So you can't define your way out of that by behavior unless you cover all of the types of claims that could be raised for separate conduct, not the Debtor conduct or as an officer and director of the Debtor.

So look, you're not going to persuade me on this, that you're just not going to persuade me.

MR. FOGELMAN: I'm not trying to persuade you to go further, Your Honor, then I think what I'm asking for. What we've tried to address is that very issue of the separate conduct. Maybe we didn't do it well. We will take another shot at this, Your Honor, and try and submit something.

THE COURT: All right, but the times a' wasting.

MR. FOGELMAN: Understood.

THE COURT: And I think there are going to be examples that you're not going to be able to cover unless you do it the other way around and not do it with the gravamen of every potential truly separate claim and instead say that this release will cover, because it's a Debtor release, as to non-opioid conduct claims that the Debtor

would have and those are expansive, including derivative claims for acting improperly on the board, for example.

But if there's a separate claim that doesn't fit into that and it comes back to the Court and the Court finds that, this release shouldn't cover it.

MR. FOGELMAN: That's helpful.

THE COURT: I think that the released parties should have the protection of strike suits brought all over the country. Instead, they should be channeled here, and you should be able to show this to a state court or a federal court in wherever, Tennessee or Florida or wherever, saying, no, you know, they had to come to the bankruptcy court first to decide whether this provision applied or not.

I understand that and I've encouraged that, but I just don't think you can define out by qualitative types of misconduct from this release, unless they're going to pay a lot more than they're paying because they're not paying to be released from a CERCLA claim, for example.

MR. FOGELMAN: And, Your Honor, we were not trying to do that, so --

THE COURT: Well, but this -- I mean, that would be the effect.

MR. FOGELMAN: Understood, Your Honor. Well, there is a separate carveout for all federal liabilities, so technically --

THE COURT: Well, state law equivalent.

MR. FOGELMAN: But understood, Your Honor, but understood.

THE COURT: All right.

MR. FOGELMAN: So we will do our best, Your Honor, to accommodate or to address your --

THE COURT: All right. No, Mr. Fogelman, I think -- I mean, you have other points, but there is a balance here under the case law. And I'm not asking you to waive your rights to say that case law is wrong, but there's a balance here between how the Second Circuit defines broadly derivative actions that can be enjoined and separately independent actions that can't. And I think what I'm getting at is how you draw that line.

MR. FOGELMAN: I appreciate Your Honor's considering our argument, and I have nothing further at this time. Thank you.

THE COURT: Okay. All right. I mean, look, this is all over the case law. The Carter Corporation, Judge McMahon says, you know, you address what you were settling and not everything else, and they rewrote the plan in Carter. It was a small plan, it's a small construction company, but they rewrote it, and they shouldn't have had to.

MR. SCHWARTZBERG: Good afternoon, Your Honor.

Paul Schwartzberg from the U.S. Trustee's Office.

THE COURT: Afternoon.

MR. SCHWARTZBERG: Thank you, Your Honor. I just wanted to take up the opportunity Your Honor had offered. We do have a few comments on the recent changes, in addition to what we had filed in our objection and our oral arguments.

And I wanted to bring the Court's attention of the new definition of shareholder releases, which is now Exhibit X to the shareholder agreement, as well as the defined term, "designated shareholder release parties," which is Exhibit S to the shareholder agreement. And I wanted to point out -- Your Honor, can you hear me?

THE COURT: Yes. I can hear you fine.

MR. SCHWARTZBERG: Okay. All right, thank you, Your Honor.

I wanted to point out first the shareholder agreement as testimony shared, it has not actually been finalized yet, so the released parties are Exhibit X and Exhibit S could be expanded and we don't know who those are. And, in fact, Your Honor, pursuant to the shareholder agreement of Section 1106, even after it's signed, it could still be amended, and I think between agreement of the NBT and the Sacklers. So we're concerned that even after --

THE COURT: I'm assuming it will be attached to

the confirmation order and the parties will have a chance to review it before the order is entered.

MR. SCHWARTZBERG: But, Your Honor, even after the order is entered, the shareholder agreement does allow --

THE COURT: No, no, not after the order is entered because that's the injunction.

MAN 1: Your Honor, we're not going to be adding parties.

THE COURT: No.

MAN 1: Mr. Fogelman doesn't need to worry about that.

THE COURT: They wouldn't be able to even if they wanted to. They're not going to do that.

MR. SCHWARTZBERG: Could they make the case, Section 11.06 to make it clear that the amendments that they can make only are up to confirmation?

THE COURT: Well, put it in the confirmation order. The Court's approving this and nothing further.

MR. SCHWARTZBERG: Thank you, Your Honor. That would be very helpful.

THE COURT: Okay.

MAN 1: That works for us, Your Honor.

MR. SCHWARTZBERG: And as I said also, Your Honor, Exhibit X still -- we were talking about the breadth of the releases. Exhibit X still includes as related entities the

businesses, the assets, and the entities owned by Side A. We believe this is overly broad and, in fact, I believe it was Mr. Mortimer Sackler had indicated he couldn't even identify all of his investments, so we think that term is too broad.

THE COURT: Why?

MR. SCHWARTZBERG: Unidentified, Your Honor, at this point. We can't identify.

THE COURT: But if you cabin the -- there's no -- these are the payors, right? And as we've just discussed, what's going to be released as far as third parties is opioid-related claims. So there's no indication that any of these entities, separately and apart in conjunction with Purdue, was engaging in any opioid-related activity.

On the other hand, they are backing up the payment of the plan.

MR. SCHWARTZBERG: Our concern, Your Honor, is these are entities that even the Sacklers may not know.

THE COURT: But -- all right. Keep going.

MR. SCHWARTZBERG: I'll move on to my next point, Your Honor.

THE COURT: Okay.

MR. SCHWARTZBERG: In regard to the --

THE COURT: I guess you haven't read the discovery that the committee and the Debtors had, right?

MR. SCHWARTZBERG: That's correct, Your Honor.

THE COURT: Okay. They have.

MR. SCHWARTZBERG: Your Honor, in regard to the non-opioid misconduct claims, we -- I think you had addressed that, and we just reserve our rights on that to see what the new drafting is regarding this because we had concerns regarding that.

And then last point, Your Honor, I had is just a concern regarding, once again, the breadth of the releases. We do note that the Debtors -- we're trying to figure out if the Debtors are including released parties that are not -- releasing parties that are not -- or causing releases that will be suffered by parties that are not creditors of this case.

The releasing parties include holders of claims and causes of action. And I know the bankruptcy code defines creditors in this case as just part of the holders of claims. So when they throw in holders of claims and causes of actions, it makes it look like they're trying to expand those who are going to give releases to those who are not creditors in the case. And if they need to limit it to just people who are creditors in the case, they should make it clear in the documents, Your Honor.

And I believe those are the only additional comments I had, unless Your Honor has any questions.

THE COURT: Okay.

MR. UZZI: Nothing further from the Debtor, Your Honor.

MR. GOLDMAN: Your Honor, may I be heard briefly?

THE COURT: Sure.

MR. GOLDMAN: Irve Goldman, Pullman Comley, for the State of Connecticut.

I had agreed to very briefly address this argument under the miscellaneous topic, as opposed to separately. I don't expect to take more than five minutes on this, Your Honor, so I hope you'll bear with me.

So I'm presenting this in addition to the states that joined our objection either expressly or by incorporation, and also on behalf of Rhode Island and Delaware. It relates to the argument in our brief that the plan infringes on the states' rights to have had their police power claims adjudicated with damages fixed in the actions they commenced against Purdue in their own courts.

And this relates to Section 362(b)(4), the legislative history of which provides that the purpose of it is to allow a government action for a violation of a consumer protection law to proceed unabated by the automatic stay in order to "fix damages for violations of such a law."

The plan takes away that right by channeling all the states' claims to the NOAT Trust, which will be funded

by the Sackler plan contributions, and then distributing those funds based on a state-by-state allocation percentage. And in fact, it's a pot plan from which the states will take their allocated share of what is put in the pot.

This mechanism, we contend, eliminates the states' rights to fix damages in their own actions, and therefore, the plan doesn't comply with the applicable provisions in Title 11.

I realize it would have been administratively cumbersome and time-consuming to have allowed for the fixing of damages in those actions in this case, but that is simply the hand the Debtors were dealt when they invoked the protections of the bankruptcy court, and I would submit they must therefore live with the burdens of the Code. And that is set forth in 362(b)(4).

I would also submit that administrative convenience can't be allowed to trump the clear protection provided for states to fix their claims for damages without being held up by the automatic stay.

THE COURT: Well --

MR. GOLDMAN: And that's all I have, Your Honor.

THE COURT: -- that's already been litigated and affirmed on appeal, without any further appeal. I'm not quite sure what you're saying at this point. Are you suggesting that even though 362 by itself wouldn't apply

post-confirmation, that somehow they would have a right to liquidate their claims, even though they would get whatever recovery they'd get under the plan? So they would --

MR. GOLDMAN: No, I'm not saying --

THE COURT: -- the states would actually spend the money to do that?

MR. GOLDMAN: No, I'm not saying that, Your Honor. I'm saying that that was a preliminary injunction. It wasn't a permanent injunction --

THE COURT: Right.

MR. GOLDMAN: -- to stay the states. And the fact that we're at the confirmation stage should not cut off the rights to have liquidated those claims --

THE COURT: That's the --

MR. GOLDMAN: -- because of --

THE COURT: -- whole reason that the... Look, Congress, in the legislative history made it clear that one could still enjoin police power under the right circumstances to liquidate a claim. And of course, the provision itself says it doesn't apply to payment of the claim. The plan is just providing for payment of the claim.

So I just -- I hear your argument, but frankly, it makes no sense. It's another sand in the gears. I mean, it's just...

MR. GOLDMAN: I hear Your Honor. I'm just trying

to make the point that I understand the injunction was issued and it was preliminary. I don't think that that means we shouldn't have had the right to -- before the plan reached the confirmation stage -- to liquidate those claims, instead of having them just put into a trust based on an allocation formula.

THE COURT: In fact, the injunction applies through confirmation, and then the stay is no longer in place, and therefore, 362 doesn't apply at all. Instead, it's the plan.

MR. GOLDMAN: I would maintain that because of that, our rights are subverted under 362(b)(4). And I'll just leave it at that, Your Honor.

THE COURT: Okay.

MR. KAMINETZKY: Your Honor, if I could briefly respond? Benjamin Kaminetzky, of Davis Polk, for the Debtors.

THE COURT: Okay, fine.

MR. KAMINETZKY: I know -- I'm actually so happy that this was raised, because we've all been wondering what plan B was for the objecting states, and I think this is just a perfect way to end today. Because what they're saying is that we should go back to the first day of this case, when the Debtors basically said, we're done, we're not litigating anymore. In Your Honor's words, we've given

ourselves up.

But they're still demanding -- and then we've worked for months and months, years, on a distribution mechanism, but now they're saying, you know what, we want to have a trial anyway on the merits against the Debtors, who aren't contesting liability, just for like fun, so that we could then...

I don't know -- are they saying then they'll go back to the NOAT anyway after they have their show trial, that we're not contesting liability, and they'll abide by the NOAT? Or are they saying, no, we won't; we'll jump the line, and the State of Connecticut will ignore the last two years, and we'll get our judgment against the Debtors, who aren't contesting liability, and we'll get everything? It is just so confounding.

And I'm actually -- this is a great way to end the hearing because what we've just showed is that there's absolutely no alternative other than going back to September of 2019, relitigating the automatic stay, having Your Honor give us this day. And this isn't even what was controversial about the automatic stay.

Remember, the automatic stay that was the most controversial was the Sacklers. He's saying he wants to litigate. They want to have 50 trials. Maybe it's even more. Maybe because -- I'm not sure if this goes to all the

instrumentalities of the stay too, so we should have thousands of trials around the country against a Debtor that admitted on the first day that it's no longer contesting liability.

It is just the insanity -- or, I shouldn't say that -- the idea that this is what's being advocated at this point, right here, at the last minute of the confirmation hearing, I think speaks volumes.

THE COURT: Well, look, I think... I want to say this diplomatically. There have been times in this case where the high quality of the lawyers has actually not been a good thing, because lawyers who are really creative and thoughtful sometimes come up with ideas that maybe seem well in the shower, but actually don't make any sense. And I just...

Look, Mr. Goldman, your clients have made some good points going to the merits of the Sackler settlement. That's where the focus should be, not on something like this. This is just not constructive. So, I would hope the parties would continue to discuss the former, and not burden this case with the latter.

MR. GOLDMAN: I hear you, Your Honor.

THE COURT: Okay. All right. Mr. Underwood, I don't know if you had a comment on the release language, or you just...

MR. UNDERWOOD: Yes. I have a very quick comment, Your Honor, that I want to raise. We have a provision in the plan. It's very straightforward as well. We have a provision in the plan that regards excluded claims. There is a portion of that provision that addresses Canadian claims, or Canadian claims against Purdue Canada.

We now have language in that provision that says that non-opioid actual misconduct claims are effectively, I guess, released. And this is --

THE COURT: No, that's what we've just been talking about, so I wouldn't worry about that.

MR. UNDERWOOD: Okay. And the second aspect of that, very quickly, Your Honor. My understanding is -- and I did ask the Debtors' counsel about this last evening, or this morning -- provision 11.1(e) would then suggest that if there's any provision such as the non-opioid actual misconduct claim in the excluded claim, we would have to come back to the United States to get approval. It seems a little untoward that the Provinces at this point would have to come to Your Honor in order to bring, you know, a federal conveyance action against a Canadian entity.

I just want to put that on the record, make sure the Debtor understood where I was coming from.

THE COURT: No. Look, first of all, claims against the Canadian entity would have to be for fraudulent

-- I don't think there's any release of a fraudulent transfer claim against the Canadian entity in this plan.

MR. UNDERWOOD: Okay. I'm not -- perhaps it's not a release. But what this seems to say is -- and I don't want to delay this further, but -- a claim that is not based upon conduct of the Debtors, including opioid-related activities of the Debtors, and that effectively -- or any non-opioid actual misconduct claim.

So I would presume that any Canadian creditor could argue in Canada that the officers, directors, Sacklers, owners, whomever, have left the Canadian entity with unreasonably small capital. That, to me, would be the type of claim that may be a non-opioid claim that could not then be brought.

THE COURT: Again, but I want to be clear, if it's just against these third parties because they are an employee or officer of the Debtor, which would be, I guess, the transferee, then, yeah, they would have to come back here if there's any question about that. It would have to be based on their own independent conduct. So, for example, if they were a transferee of the Canadian company, then you wouldn't have to come back here.

MR. VONNEGUT: Your Honor, may I address this point? I think I should be able to clear up some confusion.

THE COURT: Okay.

MR. VONNEGUT: So, the gatekeeping function that Mr. Underwood is referring to in 11.1(e). That only applies to non-opioid actual misconduct claims, which are their own prong under excluded claims. The claims against the Canadian entity that are not tied to the Debtor, those are separately excluded claims, and there's no gatekeeping function if he's pursuing those claims.

THE COURT: No, but his point was a different one, which is if the Debtor or a released party was being sued for having received a fraudulent transfer by the Canadian company, whether they would have to -- the Plaintiff would have to come to this Court as a gatekeeping mechanism to proceed.

And this should be able to be drafted so that the gatekeeping mechanism doesn't apply to clearly independent claims such as that, where if board member X received $100,000 as a gift from Purdue Canada, he wasn't a board member of Purdue Canada, didn't do anything for Purdue Canada, was just a -- you know, they decided to give him a gift, and Purdue Canada was insolvent. If under applicable fraudulent transfer law in Canada, that would be a fraudulent transfer law, I don't think you should have to come to this Court to sue that board member.

MR. VONNEGUT: Understood and agreed, Your Honor.

THE COURT: Right. So, on the other hand, if

Purdue Canada is suing the board member because she was a board member of Purdue when Purdue got a fraudulent transfer, you would have to come to the Court, because if the only basis for the lawsuit is -- or the basis for the lawsuit, or a basis for the lawsuit, is that she was just a board member. And that's a veil-piercing claim, and the creditors -- those types of claims are subject to the discharge, the Debtors' discharge, because you're just trying to do a backdoor to get at the Debtor through the insurance and through the former officer or director.

Okay. All right. Anything else?

MR. HUEBNER: Your Honor, one very last thing from the Debtor. As Your Honor noted last week, there are extraordinary letters and other filings on the docket, and actually, we just wanted to echo the courage that it takes to tell stories, and specifically to come to court as a non-lawyer is extraordinary. Those are things that all of us weigh and worked on, and we read many of those in working on all this.

We (indiscernible) for many parties. I think that we all owe the Court and chambers -- whichever way the confirmation hearing ends and whatever order is issued, we're all aware that we have dumped thousands and thousands of pages on the Court. And I think that -- you know, I just wanted to note that as we move towards the closing of the

confirmation hearing, in probably the most difficult Chapter 11 case in history in terms of what is at stake, in terms of what was at stake, in terms of the national health issues and the impact of the crisis. And it seemed odd to end the hearing without some recognition of the just extraordinary nature, in every possible way, of these proceedings.

THE COURT: Okay. Well, certainly I want to thank the Clerk's office.

MR. HUEBNER: Yes. Including certainly that the Zooms for hundreds of people and the accessibility in the (indiscernible). So I won't belabor the record. It just felt appropriate to say something, given what we've all been working on together.

One last thing, Your Honor. There are obviously still some documents to be finalized. Those things are moving along at warp speed and the emails are being exchanged. Obviously, we're aware that those things have to be done and on file prior to entry of the confirmation orders and the like. Obviously, Your Honor gave some pretty clear guidance on some of the restructuring issues within the last hour, which we will attend to; the shareholders settlement agreement, in addition to the representations we just talked about, about not letting anyone add any further parties.

So those things will be hitting the docket in

revised forms as fast as we humanly can get the parties sort of shepherded together to do that.

I see Mr. Troop has come on (indiscernible) I assume that is not an accident, since he is quite nimble in Zoom and appears, I think, only when he plans to. So let me ask him what he wants to talk about, and maybe that will be what brings us home.

MR. TROOP: Well, thank you very much, Mr. Huebner. Your Honor, Andrew Troop, for the Nonconsenting States.

Your Honor, I actually don't want to divert at all from the (indiscernible) truly heartfelt comments by the Court and Mr. Huebner with respect to the individuals in this case. I think it's something that all of us who don't represent individual victims (indiscernible) that we all share, and our admiration for the two victims who spoke (indiscernible).

But do we have some process things that we have to get to, and Mr. Huebner touched on them. And we just need to make sure that we, at the appropriate time and in the appropriate way, do not lose sight of the issues that remain unresolved and may be subject to debate with regard to how, for example, the Sackler settlement is resolved.

Your Honor, this afternoon during the hearing, Your Honor, the Debtors filed a revised perspective

injunction for NewCo, where there is an issue that is identified (indiscernible) open, and we just need to manage that process and want to do so in a way that's efficient for the Court. And so we will continue to work on that with the Debtors.

But this is a complex case with lots of threads still untied, and we just need to make sure that we don't lose sight of that.

THE COURT: Okay. Fair point. I've told the parties that I intend to rule Friday morning at 10:00. I intend to give you a bench ruling. As you know, I believe it's important in cases large and small to move the matter promptly, after having heard the evidence. And given my calendar, that's the best way to do it. As I often do with a lengthy bench ruling, I'll go over the transcript, and I may edit it, although I won't change it in terms of the substance. But I think it's important for the parties to get that ruling and know that they're going to get it on Friday morning.

However, if the parties, as I have encouraged them to do, will reach some form of agreement, either among themselves or with the efforts of Judge Chapman as mediator, they can let me know before I give that ruling, if they want to circulate it, socialize it, make sure everyone understands it. I won't be offended at all by that. In

fact, I'll encourage you, as I have encouraged you, to continue that work.

As far as other loose ends are concerned, if they are truly loose ends, I guess I will have to deal with them after I give you my ruling, which the parties have to realize will in some measure give me a fair amount of control over the outcome, if they can't reach an agreement themselves, because the issue, almost by definition, will not be so important that it would hold up confirmation. Rather, it's just an issue that needs to get resolved one way or the other, and of course, I would rather the parties resolve it on their own, as I expect they would do. But if they can't, I guess we'll deal with that after my ruling and as part of the process of submitting the confirmation order.

I won't require the order to be formally settled if I grant confirmation. But I will want to make sure the parties have sufficient time to read any changes to it, including -- you know, obviously, as I told Mr. Anker, he would have time, everyone else falls in that boat too.

So, I want to thank all the parties. We covered an extraordinary amount of ground in six days of trial and two days of oral argument. We could not have done that without the parties working very hard to streamline the trail efficiently, which I believe by and large they did.

And I also want to thank all of the lawyers, some

of whom I have made some gruff comments to. But that is no reflection on the lawyers themselves, but simply to let the parties know my views on that particular issue, which unfortunately, when you're on Zoom, I found the Court needs to be more expressive about than if you're there in person. I'm not quite sure what human chemistry leads to that result, but it's true, based on over a year's experience now in handling hearings remotely. So I hope no one took that personally. It really went to the argument, and not the lawyer.

So, thank you all, and I'll see you all again on Friday morning at 10:00.

(Whereupon, these proceedings were concluded at 6:03 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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In re 21 Civ. 7532 (CM)
et seq.

PURDUE PHARMA BANKRUPTCY APPEALS

Oral Argument
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New York, N.Y.
October 12, 2021
2:00 p.m.

Before:

HON. COLLEEN MCMAHON,

District Judge

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BY: J. CHRISTOPHER SHORE

THE COURT: Thank you very much for all of your filings over the weekend. I particularly thank you for the document that you filed this morning, identifying the issues that we need to address, and I'm very happy to address those issues in the order that you have listed them. OK? That's fine.

Let's say, as a general matter, issues on appeal, we have a number of appellants. It seems to me that the people who have filed notices of appeal should identify for me what their issues are.

Let me start by saying this.

For me, there is one giant, overarching issue in this case. It's the Sackler bar order. It's the constitutionality of the Sackler bar order. It's the statutory authorization for the Sackler bar order, and that impinges on everything. That's the big dog here. I am not going to allow the tails of the dog to wag the dog. The dog is going to get dealt with as fast as I possibly can do it. I understand there are some collateral issues on appeal that various parties have raised, but I'm principally interested in the Sackler bar order issue, and that presents, as far as I can tell, a pure question of law, about as pure a question of law as you can get.

Let's start with the first party that filed an appeal, the state of Washington.

Go, Mr. Gold.

MR. GOLD: Thank you, your Honor.

We have raised what you were describing as the Sackler release issue as our primary issue on appeal, both with respect to the injunction and with respect to jurisdiction of that same bar order. The other principal issue that we've raised on appeal is the best interest of creditors' test, which also, to a certain extent, relates to that release.

THE COURT: OK. Who has the next number in sequence? Who is 21 Civ. 7585? Do you know your case number?

I guess you don't know your case number.

MR. GOLD: Your Honor --

THE COURT: District of Columbia's not here. OK. Not here.

Who is next?

Next is 7961, and that would be Grand Prairie. And 7962 is the Cree Nation, and then the U.S. trustee.

MS. LEVENE: Thank you, your Honor.

Your Honor, we've submitted our list of issues on appeal. I think without, you know, waiving any specific issue or argument, it is fair to say that everything ties back to what we see as the (inaudible) nondebtor release and I keep seeing a glimpse of our arguments with the emergency motion to stay We think it's impermissible based on the due process clause.

THE COURT: I know.

MS. LEVENE: OK.

THE COURT: Believe me. I've read it all. OK?

Great. After that, we have two appeals filed.

MS. LEVENE: Yes, we do, your Honor. One appeal is of the confirmation order. The other appeal is the advance order authorizing that funding.

THE COURT: Right.

MS. LEVENE: Skip ahead, we believe we can consolidate those two separate appeals.

THE COURT: OK.

MS. LEVENE: And I think they all do tie back to the release.

THE COURT: It may all tie back to the release. Right. OK.

State of Maryland.

MR. EDMUNDS: Yes, your Honor.

We have essentially the releases, your Honor, and the validity of the channel injunction and all of the subsidiary issues that are related to that as subordinate issues under that heading, and also the best interests issue, which relates to them too.

THE COURT: OK.

Connecticut, I assume, is the same as Washington.

MR. GOLDMAN: Yes, it is, your Honor.

I would just add that there was an issue listed about

the bankruptcy court here misapplying the *Metromedia* factors.

THE COURT: That's part of the same thing.

MR. GOLDMAN: I would agree. I was just getting more specific, your Honor.

THE COURT: No. It's all part of the same thing.

MR. GOLDMAN: Agreed.

THE COURT: OK.

California.

MR. ESKANDARI: California agrees with your Honor that the Sackler release is the big dog here.

THE COURT: Good. OK.

Delaware, anything different?

MR. GOLD: Nothing different for Delaware, your Honor.

THE COURT: Right. OK. And Rhode Island.

MR. GOLD: Same, your Honor.

THE COURT: Oregon. Is Oregon even here?

Fine.

MR. GOLD: They're not here, but they have the same -- we've coordinated with them and they have the same as well.

THE COURT: OK. Terrific.

MS. LEVENE: Your Honor, there are some *pro se* appeals, and so I don't know --

THE COURT: That's not the first item on the list. That's item four on the list.

MS. LEVENE: I just didn't know what issues those were

going to raise.

THE COURT: I have no idea. They'll be dealt with when we deal with them. I would rather imagine that most of them at least have something to do with the Sackler release issue. They may have other matters that they raise as well, but I'd be surprised if they didn't mention the Sackler release issue.

OK. I have a motion from United States trustee, which I understand, as a technical matter -- this is on the identity of the appellees, which I understand, as a technical matter, the United States trustee is raising the issue of who constitutes an appellee, and I agree -- by the way, I've read the briefs on both sides. And I agree with the United States trustee that as a technical matter, the appellees in this case are the people who litigated the Sackler issue below. And so if it's not in your brief below and you didn't rise to speak to that particular issue below, you're not an appellee.

Now, the reason I found the issue kind of weird is what makes you think I wouldn't just listen to these other -- the unsecured creditors committee is in, the governmental and other contingent litigation committee is in. What makes you think I'm not going to grant like that a motion for amicus status?

MS. LEVENE: Your Honor, we have never opposed it.

THE COURT: And what's the difference?

MS. LEVENE: Your Honor, we have, as we've said all along that we would consent to amicus participation, and we gave broad notice when we sought our notice of appeal so that people could seek to intervene or participate on any case they wish. So we do not oppose amicus status, and we never have.

THE COURT: 1109(b) is a nifty little statute that says absolutely nothing about who is a party on appeal, and that is why I agree with the United States trustee that if you litigated below the issues that are raised on the appeal, you're an appellee, and otherwise you're a party who should be heard. OK? So I think that anybody in this room, which I think is, maybe, one or two committees, who falls into that status can make a pretty pro forma, one-page motion, and assume that I would grant it. OK?

Again, understand I'm becoming familiar with the record here, but odd as this is to say, this is not about the -- the core issue here is the Sackler release issue, and that does not turn, in my head, on the evilness of the Sacklers or the lack of evilness of the Sacklers. It turns on whether this is constitutional, whether this is statutorily authorized.

Judge Drain, God bless him. First of all, I want to say on the record in this courtroom that that man has driven himself to distraction for you folks and done a brilliant job. There is no way I could have come up with, let alone read into the record that fast after that trial, that opinion, given with

all those issues. It was just an amazing tour de force art of judging, and he's to be commended for it, and I do. And I want that on the record. OK?

But I have to whittle this down to what's really the juice. OK? And we all know what the juice is. There's never been a case like this before: I've read dozens and dozens of cases. There is no case that has facts like this. *Drexel* does not have facts like this. *Metromedia* does not have facts like this. The issue is, is it constitutional; is it statutorily authorized? And then we have the *Metromedia* factors, which obviously the state of the record plays into that. But that's the juice here. OK? That's what we're going to resolve. At least we're going to resolve it if you're here, which is another question, but that's down the list.

MR. SHORE: Your Honor, may I be heard on behalf of the individual victims?

THE COURT: Yes, Mr. Shore.

MR. SHORE: Just briefly, first to address the issue of participation today, we can certainly get a motion on file, but to the extent we're going to be addressing the stay --

THE COURT: Everybody in this room is participating today. OK?

MR. SHORE: And second, the difference between amicus status and appellee can be a real one, first of all, in connection with any motion, but second, and I'll just digress

for a moment. Our group is 65,000 or essentially half of the individual victims.

THE COURT: OK. Did you litigate the issue below? Can you point me to something that shows you raised that issue, the issue, below?

MR. SHORE: There are several issues that are raised by this appeal that come up. One is what was mentioned before, which is the advances order, which is on appeal and which will be put in.

THE COURT: Maybe they'll be stayed by the end of the week.

MR. SHORE: Right, but to the extent issues come up with that, we did participate on that.

THE COURT: Great. Anything you're participated in you're obviously a part of.

MR. SHORE: Sure.

THE COURT: 1109 does that for all. I'll grant you that. 1109 goes that far.

MR. SHORE: Right.

Then second, within our group are 35,000 people who did not vote on the plan and several hundred who voted "no" on the plan.

THE COURT: Understood. I understand that there are thousands upon thousands of people who either voted "no" or didn't vote at all.

MR. SHORE: Right.

THE COURT: Understood.

MR. SHORE: Right.

THE COURT: That certainly gives you the right as an amicus to advance their interests. OK? It does.

MR. SHORE: OK. Maybe it's a matter of semantics.

THE COURT: To me, I think it's a matter of semantics. The U.S. trustee had this statement, We will allow you to be an amicus as long as you limit yourself to this and that. I didn't say that.

MR. SHORE: OK.

THE COURT: You're an amicus. You represent the interests of your people.

MR. SHORE: Fine.

Just to be clear, we do have definitive views with respect to the U.S. trustee's assertion of our members' constitutional rights with respect to the third-party releases, and so we'll just address that whether it's an amicus or an appellee, your Honor.

THE COURT: Whether you're a one or the other, you will put those views in front of me.

MR. SHORE: Thank you, your Honor, very much.

THE COURT: I don't want anybody not to be heard. OK? There are a lot of people here who wouldn't technically qualify as appellees, but they want to be heard.

MR. SHORE: Thank you, your Honor.

THE COURT: Yes, sir.

MR. WEHNER: Your Honor, if I could be heard briefly on the question of appellee status?

THE COURT: All you have to do is point me to what is -- send me a one-page motion that says I can prove that I argued this issue below.

MR. WEHNER: August 23, the transcript is at 118:10.

THE COURT: I don't have the transcript.

MR. WEHNER: Well, I understand. We'll send it to your Honor.

THE COURT: Thank you.

MR. WEHNER: We argued the release issue. We are appellees on all issue.

THE COURT: Fine. Great. If you can prove that, great. Phenomenal. Terrific. I told you what I thought about the U.S. trustee's motion.

MR. WEHNER: Thank you, your Honor.

THE COURT: OK. Item three.

MR. PREIS: Your Honor, there is one -- I know you said the parties that are here. There is one *ad hoc* group, which is called the Ad Hoc Group of NAS Children.

THE COURT: Yes.

MR. PREIS: It is on the phone, but they're not speaking on the phone. They had asked me to make sure that to

the extent this issue arises, that they have the same rights, and they're not in the room.

THE COURT: Truly, a one-page motion to be heard as amicus, unless they argued it below. If they argued it below, all they have to do is attach the appropriate pages from the transcript or their brief.

MR. PREIS: Thank you, your Honor.

THE COURT: I just have to tell you that as a practical matter it's not going to make a hill of beans' worth of difference. It really isn't.

OK. What does this mean, coordination/consolidation of appeals?

MR. KAMINETZKY: Good afternoon, your Honor.

Your Honor, we just heard there's 15 or 16 differing appeals. What this item is asking is that we could make some sense out of the chaos and have a single record on appeal, a single briefing schedule, a single date for oral argument.

THE COURT: Oh, yeah.

MR. KAMINETZKY: Permission to file an omnibus reply in opposition so that you're not reading 16 different --

THE COURT: Absolutely, positively.

MR. KAMINETZKY: OK.

THE COURT: Whatever will expedite this. Of course, it should be consolidated. We only need one record on appeal.

MR. KAMINETZKY: With respect to designations and

counterdesignations.

MS. LEVENE: Your Honor, before we move on to the next item --

THE COURT: I want to move on, but he doesn't start talking.

MS. LEVENE: I'm sorry. I thought consolidation issue was a couple items later.

MR. KAMINETZKY: No, it's this. Because each appeal has its own time clock, we have 16 rolling designations and counterdesignations that are making scores of associates crazy back in my office, so what we'd like to do is have one omnibus designation.

THE COURT: Pick a date.

MR. KAMINETZKY: Exactly. So we could work that out, and if that's OK with your Honor --

THE COURT: You should have worked it out by now. If I haven't made it clear, I'm going to move this thing.

MR. KAMINETZKY: Good.

THE COURT: OK? I'm going to move this thing. Assuming it's still here by the end of the week, I'm going to move this thing.

MR. KAMINETZKY: Awesome.

THE COURT: So work it out.

MR. KAMINETZKY: Good.

THE COURT: Now, the U.S. trustee wanted to be heard

on this issue.

MS. LEVENE: Yes, your Honor.

All I was going to say about consolidation is we just want to make sure things are moving along on an expedited basis, and we had proposed a faster schedule than some other people in the room. That was our only concern about consolidation, is if other people with different issues --

THE COURT: Well, if we have to thrash out the dates here and now, I'm happy to do it.

MR. KAMINETZKY: Your Honor, that's item five, and we'll get there in probably about 43 seconds.

THE COURT: Right.

Pro se appeals, what do I need to know about the *pro se* appeals?

MR. KAMINETZKY: Your Honor, only that we're just asking that these appeals be subject to the same schedule. Let me just give you a little background on the *pro se* appeals. I don't know if anyone is on the line.

Two of the *pro se* appeals -- those are Marisa Maria Ecke and Elaine Isaacs -- are basically focused on the same issue as the other appeals as your Honor has, you know, third-party release.

THE COURT: Sackler release, right.

MR. KAMINETZKY: Right.

There's one additional *pro se* appeal of a Mr. Ronald

Bass. He has slightly different issues, claims against the debtors and the state of New Jersey under the Americans With Disabilities Act. While this is different in kind, we just ask that all of these *pro se* appeals, including Mr. Bass, proceed on the same schedule.

THE COURT: I have no problem with that.

MR. KAMINETZKY: OK. I guess that was 48 seconds.

So now we're up to --

THE COURT: Wait a minute. The U.S. trustee wants to be heard.

MS. LEVENE: I just wanted to footnote that last I checked, two of those appeals hadn't been docketed yet, so I just wanted to alert you to that.

THE COURT: OK. Well, presumably they'll get on the docket today. It was a holiday weekend.

MS. LEVENE: Yeah, but I don't think those individuals would have had notice of this hearing to be here.

THE COURT: OK.

OK. I have item five as proposed schedules.

MR. KAMINETZKY: Yes, your Honor.

What we did is we included in the chart or in the items list that we provided last night or early this morning the bids and the asks. There's three proposals. The good news is they're pretty much --

THE COURT: Pretty close.

MR. KAMINETZKY: They're pretty close. It's the U.S. trustee's, the appealing states' and the appellees'. You'll be shocked to hear that we believe that the appellees' proposed schedule is the most reasonable. It is quick. It is fast. You have the file brief going in November 19. You have oral argument, at your Honor's discretion and leisure, (inaudible) after November 22. And as you'll hear in detail when we move on to the TRO and the stay, that's well before any possible emergence date with respect to the plan of reorganization.

THE COURT: When is the sentencing?

MR. KAMINETZKY: The earliest it possibly could be -- we don't have it scheduled yet -- is December 1.

THE COURT: Who is the sentencing judge?

MR. KAMINETZKY: It's in front of the District of New Jersey. I'm not sure the name of the judge, your Honor. I apologize.

MS. MONAGHAN: I believe it's Claro.

MR. KAMINETZKY: Claro.

THE COURT: Claro?

MS. MONAGHAN: I believe that's it.

THE COURT: A new judge.

MS. MONAGHAN: District of New Jersey, your Honor.

THE COURT: Not a name I know.

MR. KAMINETZKY: Your Honor, the earliest we could possibly emerge under the agreement is December 8, so obviously

your Honor's going to rule when your Honor rules, and I'm not here to tell your Honor how quickly your Honor has to rule, but we believe that the appellees' schedule is fast. It gives people adequate time, given that these issues have been chewed on and rechewed on down below, and we think the appealing states' schedule is just too long and we want indeed to get this moving.

THE COURT: OK. And the U.S. trustee wants a slightly shorter schedule.

MS. LEVENE: Your Honor, I believe our schedule is roughly the same, just starting earlier, and that's because we want to move this along quickly.

THE COURT: It's like four days earlier.

MS. LEVENE: Right.

THE COURT: Usually when I have bids and asks, there's about a three-week to three-month difference.

MS. LEVENE: No.

THE COURT: Four days is --

MS. LEVENE: They're very, very close.

I had a couple things I wanted to add regarding the schedule. One of the things is for amicus participation, we would like to get amicus briefs filed at the same time as the primary party briefs --

THE COURT: Agreed.

MS. LEVENE: -- to move them along.

And the other is just a footnote. We want to go forward on the schedule. We've got a week for reply briefing here. We assume we're going ahead with the default word limits under the bankruptcy rules, but we wanted to reserve our right on reply to either move for additional pages or a little bit of additional time if we're faced with six, seven, or eight responding briefs that we need to reply to.

THE COURT: OK.

MR. KAMINETZKY: Your Honor, that's a fair point. If I may? If your Honor could be flexible with respect to pages, because --

THE COURT: Oh, please.

MR. KAMINETZKY: -- respond.

THE COURT: Please. Please forget about the page limit, but don't tell me stuff I know.

MR. KAMINETZKY: Understood.

THE COURT: OK? You can eliminate the boilerplate and just get to the meat of it, but I genuinely want helpful briefs, and for me, helpful briefs are briefs that discuss and distinguish, or whatever the opposite of distinguish is, the relevant cases. I sit in the Second Circuit. You know that.

So, for example, to the United States Attorney, whether I agree with you or not, I can't tell the Second Circuit that *Metromedia* is wrong. There are many interesting arguments that can be made under *Metromedia*, and I could, in

fact, tell them if I thought it was wrong. I just couldn't have ruled on them. So I'm particularly interested in Second Circuit precedent for this.

This is how I train my law clerks. A helpful brief, a helpful opinion, is one that doesn't mention a case and then put some quote in a parenthetical. It's a brief that tells me what the case is about, what the holding in the case was, and why the relevant language matters. It's a brief that says we're on all fours with this, or our case can be distinguished in the following way. I really don't need to give you guys brief-writing lessons. I'm assuming I've got the best of the best of the best in this room, but that's a brief that's helpful to me.

I'm already reading cases like crazy.

MR. KAMINETZKY: Your Honor, just to respond to the U.S. trustee, we're all kind of dancing as fast as we can, and we're going to have 16 appeals to, or 16 possibly briefs, maybe some of them are consolidated.

THE COURT: You're going to write an omnibus brief on the --

MR. KAMINETZKY: Of course. Obviously we're going to do that to make it easier for your Honor, but I don't think the U.S. trustee needs another week or whatever it is for the reply. We've all done this before, so your Honor, I guess that's where we are. We have these three proposals.

THE COURT: I'm trying to figure out what you agreed with on the U.S. trustee's proposal.

MR. KAMINETZKY: Oh.

THE COURT: That's where you started out.

Let me hear from the states.

MR. GOLDMAN: Yes, your Honor.

We're jointly representing five states, and we're seeking to coordinate to file a unified brief or at least one in which the other appealing states could adopt, in whole or substantially in part. They are Maryland, California, Oregon, and the District of Columbia. Each of those states has their own appellate team that we're going to have to coordinate with.

THE COURT: And you're going to have to work real fast.

MR. GOLDMAN: Your Honor, we're prepared to do that. We just think that what we have proposed is the most reasonably expeditious timetable that we can manage. We can't just dust off our briefs that were submitted below. We weren't given the opportunity to reply to the objections that we received in response to our objections.

THE COURT: Then you might want to start there.

MR. GOLDMAN: There is a record that we have to deal with, an extensive record, and a 157-page bench ruling from Judge Drain that has citations and extensive reasoning that really wasn't quite articulated in the briefs below. So we

have that to deal with. I think that 17 days from today is not an unreasonable, and it's not an unduly lengthy period of time to expect the states to react to this, to raise issues that are before the Court here. So we would maintain that we stick with our schedule, which still gets us into early September by the time -- or mid-September.

THE COURT: Early December.

MR. GOLDMAN: Yes.

THE COURT: OK. Here's my constraint. My constraint is that I'm starting a two-defendant criminal trial on December 7, so I have to have the argument before that. That's my concern, and it's not going to go away.

MR. GOLDMAN: Your Honor, I could suggest as a compromise position that we could just cut back the appellees' reply brief to November 12. They still have almost two weeks to respond to our opening brief.

MR. KAMINETZKY: Your Honor, may I just make a point?

The judge ruled on September 1. We've been sitting on this. September 1 is now almost two months ago. I appreciate everything --

THE COURT: No, it's not. September 1 is a month and a half ago.

MR. KAMINETZKY: Six weeks ago. You're right.

THE COURT: Be fair.

MR. KAMINETZKY: It's six weeks ago.

So yes, there is an extensive record.

THE COURT: But everybody should be working on their briefing all along.

MR. KAMINETZKY: Everybody's been working on it. Right.

THE COURT: And attorneys general, God bless them, are as slow as molasses, and I feel for you in this regard. I understand the difficulties that you have with your clients. I don't have your clients.

Here's what I would propose. I actually do like the appellees' schedule with the oral argument for scheduled for the 30th of November, but if the states find that they're having difficulties with their clients, I'll be happy to give you a few extra days, if that happens. It's all going to be the same anyway. And if the appellants, particularly the U.S. trustee, seem to have issues with the 19th, I'll be happy to give you a few days, over the weekend. That will, I point out, allow you all to have a better Thanksgiving weekend than I will have.

MR. HUEBNER: Your Honor, just one very small point?

There are a huge number of states on the appellee side also, many multiples, frankly, of those than on the appellant side, and just in the interests of fairness, to be clear, there are 38 states who support the plan.

THE COURT: I'm aware of that. There are 38 states

that support the plan. Tell them they'll have overnight to comment on the brief. It's time for you guys to tell your clients and the other, the states, if they want to comment on the brief, fine. They've got 24 hours. That's what the judge says.

MR. HUEBNER: Understood.

THE COURT: All right? You can blame it on me. It's not you. It's me.

I'm being told by Mr. O'Neill -- this is Jim O'Neill, my senior law clerk; he runs this operation, and I'm being told that people need to speak up and be very clear, because we have folks on the phone.

OK. I'm adopting the appellees' proposed schedule with the understanding that anybody can ask for an extension of three or four days, and that's fine. I'm setting oral argument for November 30, 10 a.m.

Block the day. I hear you guys talk a lot. When I told Judge Drain that I'd entered the TRO, he told me you talk a lot.

Yes, sir.

MR. GOLD: Your Honor, just to clarify, to make sure that if we are going to be requesting three or four additional days at some point, that would be done by means of an ECF-letter; is that the proper way to do it?

THE COURT: It would actually be by ECF notice of

motion, but that's all it has to be, an ECF notice of motion.

MR. GOLD: Thank you, your Honor.

THE COURT: But try to adhere to the schedule.

Yes, sir.

MR. PREIS: Your Honor, I just wanted to clarify one thing, which is if the states ask for a few more days to submit their opening brief, then obviously those extra days get added on to our response brief timing so we wouldn't get jammed by their extra days.

THE COURT: Sure.

MR. PREIS: OK.

THE COURT: But I think you can start writing your brief now.

MR. PREIS: I understand.

THE COURT: I really think if it were me, if I were still on that side of the bench, I'd already have a draft of my brief on appeal. And let's not pretend that you don't.

Record designations and providing a record to the Court, you're going to work that out.

MR. KAMINETZKY: Your Honor, just to understand your Honor's preference, do you want us to start providing your Honor copies of all the designated exhibits? Do you want us to wait until the briefs are filed and to see what the --

THE COURT: Oh, start shipping them in.

MR. KAMINETZKY: OK. And do you like things in hard

copy?

THE COURT: I regret to say that I do.

MR. KAMINETZKY: OK. And do you want everything that's designated and counterdesignated?

THE COURT: No. I want what's important.

MR. KAMINETZKY: OK. May I suggest, then, your Honor, that we wait to see what exhibits are incorporated into the various briefs?

THE COURT: That's what makes the most sense to me.

MR. KAMINETZKY: OK.

THE COURT: If it's not important enough to be in your brief, it's really not important enough. You know that.

MR. KAMINETZKY: Agreed.

Is there anything your Honor would like now, before the briefs are filed, that would -- just anything you need we could give you?

THE COURT: I'll tell you what. You know the record. I don't. If there's something you think I should be looking at already, other than case law, which I am devouring, feel free to submit it by, say, next Monday. OK? I'll take a look at it.

MR. KAMINETZKY: Your Honor, would you like all the briefs down below? Would that be helpful?

THE COURT: No.

MR. KAMINETZKY: OK.

THE COURT: Because I'll just read the same thing all over again.

MR. KAMINETZKY: We will do that.

THE COURT: Great.

MR. KAMINETZKY: Moving on to the certification of direct appeal.

THE COURT: Oh, yes. Now, having done all of that, how many people in this room are supporting that application?

OK. Some are, some aren't. Obviously, the bankruptcy rules are very unusual to us district court judges, so it took me a while to figure out that Judge Drain had jurisdiction notwithstanding the fact that you had filed a notice of appeal. He'll be hearing that on Thursday. He'll do what he's going to do, and then you have to go to the circuit, and if this all bypasses me, this will have been lovely. It will have been nice knowing you. I will certainly ask Chief Judge Livingston if this works like a three-judge court if maybe I get to be designated to be on the panel, but who knows. OK?

At the very least, it was an education.

MR. KAMINETZKY: Your Honor, you saw my (inaudible). Our only point here was that whatever happens shouldn't delay what's happening here in court.

THE COURT: It absolutely does not.

MR. KAMINETZKY: Even if Judge Drain certifies, as your Honor knows, the Second Circuit then has to agree to take

it.

THE COURT: Yes, I know that.

MR. KAMINETZKY: They might not even consider that before your Honor's ruled on this.

THE COURT: I know that. Believe me. Until they take it away from me, it's here.

MR. KAMINETZKY: OK. Thank you, your Honor.

Wow. We've really done --

THE COURT: And by the way, if they take it, they should take the briefing schedule too.

MR. GOLDMAN: Your Honor, before we get to the stay motion, just to make a note that the appeal of the state of Vermont has not yet been docketed with the district court, that they would be one of the appealing states and one of which we represent, so -- they haven't gotten a number yet, though.

THE COURT: OK.

MR. GOLDMAN: I don't know how we deal with that.

THE COURT: It will be automatically added by the assignment committee to my docket when there's a number, when it's docketed. You're here today, so I assume that Vermont's interests are represented. Vermont is bound by this schedule. I don't know why it took Vermont so long to decide that it wanted to file a notice of appeal, but no attorney general gets to dictate the schedule in my courtroom, and this is a fast schedule, for all the obvious reasons.

OK. I think we've reached the U.S. trustee's emergency motion for a stay pending appeal, which has been joined in by Connecticut, Washington, and Maryland.

MR. KAMINETZKY: Your Honor, if I may?

THE COURT: No, you may not. It's not your motion.

MR. KAMINETZKY: OK.

THE COURT: OK.

MS. LEVENE: Your Honor, we appreciate the entry of the temporary restraining order, given the expiration of the automatic stay, and consideration of the emergency stay motion today.

THE COURT: Well, I am going to give folks a chance to put in a brief, like in the next 24 hours, but you may as well argue it now. I'll extend the TRO. There will be a ruling by Thursday at the end of the day.

MS. LEVENE: Thank you, your Honor.

Will we have a chance to respond?

THE COURT: No. No reply.

MS. LEVENE: All right, your Honor.

Thank you for allowing us to present this. We view this as an emergency, and we appreciate your willingness to engage and rule quickly. As we'll explain, the Court has jurisdiction to enter a stay pending appeal, and we believe a stay can be decided on the existing record.

THE COURT: I agree.

Next.

MS. LEVENE: As you know already, we're committed to an expedited briefing schedule, and I raise that because the primary argument that we have heard -- we haven't seen a written file in response to our request for a stay yet, nor in the bankruptcy court either. I raise that because the primary argument in response is concern about delay.

THE COURT: There are two arguments. One is you're not going to succeed on the merits. The other one is the letter.

MS. LEVENE: And so as the delay point, I think the expedited schedule is quite relevant, and I'll get to that more in a little bit. We think that the permissibility is nonconsensual (inaudible) releases.

THE COURT: Now I'm starting to lose you. OK? I can't understand.

You know what would be helpful to me?

MS. LEVENE: Should I go to the podium?

THE COURT: Go to the podium, take off your mask, and argue this. And please don't tell me what the standards are for an injunction.

MS. LEVENE: All right. Can you hear me all right?

THE COURT: Oh, so wonderful.

MS. LEVENE: It's nice to be able to speak without the mask, your Honor. Thank you.

So, in our emergency motion, we asked for a stay pending a decision on the stay pending appeal, which you have granted, and we appreciate that. For the stay pending appeal, we would like a stay pending exhaustion of all appeals, and of course, we've asked for alternative relief, if you deny the stay pending appeal, a stay long enough for us to seek relief from the Second Circuit.

On the standards for a stay, we believe we've met them. Because this does raise very important issues, we believe we have a likelihood of success on the merits for the reasons we discussed in our brief, and we don't think it can be disputed that there are serious questions here on the merits that raise a fair ground for litigation and the balance of the hardships, including the harm to the victims who had their claims eliminated potentially without appellate review on the merits favor the stay.

Your Honor, in one of your orders, you raised a question about whether you have the power to enter a stay pending appeal, and you do. I don't know if you still have that question in your mind.

THE COURT: I don't have that question in my mind.

MS. LEVENE: OK.

THE COURT: I've done some research.

MS. LEVENE: I didn't quite hear you.

THE COURT: I've done some research.

MS. LEVENE: All right. So you do have that power.

We think we meet the standard for a stay, and you've read our papers so I'll be brief about the merits arguments. But as I said, there are serious issues here that raise fair ground for litigation. And because these releases violate the due process clause, there was not adequate notice that individuals, victims who are being denied their opportunity to sue the Sacklers and other nondebtors are being deprived of their property interests of these claims against nondebtors without an adequate opportunity to be heard, without compensation and without consent, we think that raises serious due process issues.

We also think these releases are not permitted by the code even as it's been interpreted by the Second Circuit, and we understand that you're bound by the Second Circuit.

THE COURT: Right. I want to hear your argument on that point.

MS. LEVENE: I'm sorry. I'm having trouble hearing you.

THE COURT: I said I'd love to hear your argument on that point.

MS. LEVENE: So, as for *Metromedia*, *Metromedia* actually didn't hold the releases at issue there to be OK. It dismissed the case on equitable mootness grounds, and it didn't address the constitutional issues that we've raised here. And

it talked about the cases that did allow such releases as being rare cases that met certain conditions which are not met here. Because these releases are so very broad, they extend far beyond the persons who would have a claim for indemnity or contribution, for example.

There's not a channeling of the claims. I know the debtors have talked about there being a channeling of the claims, but the way the plan documents work is if you have a claim against the Sacklers or some of these other nondebtors, it's defined as a channeled claim, but then no compensation is being paid on that claim, and we think that separates this very distinctly from some of these cases where claims are channeled.

THE COURT: I'm curious about something that needs to be put on the record. The kinds of claims that we're talking about, the claims against the Sacklers, the nonderivative claims, the state law claims, the nondischargable claims, what are we talking about, and who has standing to assert them?

MS. LEVENE: Your Honor, it's very broad, broadly defined because the cause of action is very broadly defined. It includes things like fraud, for example, that can't be discharged. It includes things like defenses and offsets, which wouldn't be covered by a bankruptcy discharge. And it's defined in a way that is -- so to compare it, for example, to 524(g), which was at issue in the *Quigley* case and which applies to asbestos cases --

THE COURT: It only applies to asbestos cases.

MS. LEVENE: But just to compare it to that, there, the liability must arise based on the conduct of the debtor.

Here, the release is raised more broadly, where the debtor conduct should be either a legally relevant factor or a legal cause, and so you've got what (inaudible) conjunctive of 524(g), where it has to be based on the conduct of the debtor and the liability must arise by reason of the defendant's statutory relationship to the debtor. Here, that's all broken apart. So it doesn't have to be -- the liability doesn't have to be because of the conduct. We don't really know what legally relevant factor means here.

THE COURT: Your position is that 524(g) isn't relevant anyway, so who cares?

MS. LEVENE: To extent that we're talking about what derivative liability is, it's a way of contrasting.

THE COURT: But isn't your point --

(Indiscernible overlap)

MS. LEVENE: Derivative liability. It's not based just on liability for the debtor's conduct.

THE COURT: Right. We're talking about, and I'll use the phrase, "nonderivative claim." That's your problem, the release of nonderivative claims, the evil things that the Sacklers allegedly did. And I'm just curious whose claims are those? Who has such a claim?

MS. LEVENE: Your Honor, there are a number of individuals who could have a claim. There are suits. There are, I think, 400 suits against the Sacklers.

THE COURT: But the Sacklers didn't say anything to any of those people. I'm just trying to figure out what the -- you're the ones who say, and I agree with you, that it's very difficult to parse the scope of this release, and I'm trying to figure out what is and what might not be covered. And a fraud claim requires a misrepresentation of some sort to someone.

This is not like *Metromedia*, where the claims that were being discussed by Judge Jacobs in his disquisition before he ruled on equitable mootness grounds were claims that the Kluge family had against the corporation. The Kluges owned *Metromedia*.

This is not like *Drexel*, where we're talking about a discrete number, like 850 securities fraud claims. They were all securities fraud claims. Everyone knew what they were. I'm trying to figure out what are these claims that people are asserting against the Sacklers or that they would like to assert against the Sacklers?

MS. LEVENE: Yes, your Honor.

And you know, to some extent, we don't know because people were not able to file claims in light of the preliminary injunction. We do know there have been objections filed to the plan, and they're the ones that we cited in our brief where

someone who objected had, I believe, a class action complaint.

THE COURT: A class action complaint premised on what?

MS. LEVENE: Your Honor, I'm afraid I'm not sufficiently familiar with those details right now.

THE COURT: OK.

MS. LEVENE: But I believe they wanted, they want to hold the Sacklers liable for their own actions and their own conduct.

THE COURT: Right. As opposed to their conduct as officers, directors, managers.

MS. LEVENE: As opposed to saying Purdue did this, and therefore, you're liable because you're a director, but for their own individual conduct.

THE COURT: Other than their conduct as officers, directors, and managers. OK.

OK. Maybe somebody else in the room can enlighten me a little bit, but you go ahead and argue your motion.

MS. LEVENE: And your Honor, of course, we, in addition to the statutory argument, do think there are constitutional issues here, including the due process clause, including the Court's authority to enter these releases under the bankruptcy clause and as an Article I --

THE COURT: You have a Thurgood Marshall argument that only this Court could do this, but Judge Drain couldn't do this.

MS. LEVENE: Yes. And there's a piece of that where an exclusion for certain nonopioid claims where the bankruptcy court as a gatekeeper functioned, which we think implicates --

THE COURT: I'm sorry.

MS. LEVENE: There is an exclusion from the release of these certain nonopioid claims, but for those claims the bankruptcy court plays a gatekeeper function. They have to be brought first to the bankruptcy court, which could say, no, you're not allowed to pursue those claims. And we think that raises certain issues as well.

THE COURT: I see. OK.

MS. LEVENE: So, your Honor, we think these are very serious questions on the merits, and they do present a fair ground for litigation, particularly as recognized in the *Arnaut* cases that present these facts and the balance of harms raised in favor of a stay. Your Honor, as you recognize --

THE COURT: Basically, you're balancing the harms, and the immediacy or close to immediacy of payment is balanced, on the one hand, against the other extinguishment of claims by people who have constitutional claims or have common law claims against the Sacklers under some theory, on the other.

MS. LEVENE: Yes, your Honor. We think the complete elimination of the rights outweighs a delay.

THE COURT: A delay of a few weeks or a couple of months in the great scheme of things.

MS. LEVENE: Yeah, and hope, you know, we want to obviously have this moving quickly.

THE COURT: I know.

MS. LEVENE: And we do think that outweighs, particularly if there's a risk that there would not be appellate review in the absence of a stay because of equitable mootness, and to be clear, we don't think equitable mootness should apply, but it's unquestionably a risk.

THE COURT: Yes. It turned out the case I was thinking of was a statutory mootness case. It was the *Sears* case. It wasn't an equitable mootness case, but I have encountered equitable mootness before.

When is that being argued in the Supreme Court?

MS. LEVENE: You know what? I believe that petition for certiorari was denied today.

THE COURT: You're joking.

MS. LEVENE: I'm not joking.

MR. HUEBNER: It was denied. One was denied last week. The other was denied today.

THE COURT: Oh, my God.

OK.

MS. LEVENE: So, we are left to grapple with a doctrine that we don't think should apply, but the Second Circuit --

THE COURT: Your point is you can never know.

(Indiscernible overlap)

MS. LEVENE: -- agree with us.

THE COURT: Because who knows where the line is for substantial confirmation.

MS. LEVENE: Yes, and the debtors have said that nothing that's happening now could be a ground for equitable mootness, and you know, we can all agree about that and the Second Circuit may still not agree. And we want to make sure that there's review on the merits in this case. And we don't want to take any risks with that, and we don't think we should get to a point where we're litigating equitable mootness either. The stay is a way to make sure that this case on appeal gets heard on the merits.

THE COURT: OK.

Let me hear from Davis Polk.

MR. KAMINETZKY: Good afternoon, your Honor.

It's truly unbelievable what's going on here, because it seems like we're in an alternate universe. I need to set the record straight.

There's one absolutely critical and, we believe, dispositive fact that the U.S. trustee hasn't told you that I think should frame our discussion and allow us to chart a reasonable path forward, and I appreciate your Honor saying that you'll give us an opportunity to file a brief on the stay point, but that is entirely unnecessary. and let me tell you

why.

There is absolutely no emergency here that requires an immediate stay or a TRO, because there is zero risk -- zero risk -- of near-term events or actions that could lead to equitable mootness. In this regard, this chapter 11 case is quite different than cases that your Honor might have encountered in the past, where the debtors could emerge by sending wire transfers or transferring stock. That's not the point here.

Every party in this case knows, because we have told them, because Judge Drain has said so, because it's spelled out in black and white in a plea agreement that there is no scenario where the debtors can emerge until December 8 -- December 8 -- at the earliest.

Let me explain.

As your Honor's aware, we've heard a little bit about this Purdue Pharma, one of the debtors in this case, after a contested hearing entered into a plea agreement with the Department of Justice to resolve its criminal and civil investigation. The timing of the effective date of the plan is tied to the date of the sentencing hearing in the New Jersey district court.

Under the plea agreement, the sentencing hearing is required to occur 75 days after the debtor's plan is confirmed and at least seven days before the plan becomes effective.

What does that mean?

At least 82 days must elapse between the entry of the confirmation order and effective date of the plan. So since the confirmation order was entered on September 17, the sentencing hearing cannot -- cannot -- occur before December the 1st and the effective date cannot occur sooner than December 8. There is absolutely no danger that the debtors will emerge suddenly, without notice, at an unforeseen time.

Now, your Honor's order Saturday night -- now, the debtors have been laying the complex groundwork to emerge after sentencing, to secure licensing, to obtain regulatory approval, setting up new shell companies, and the like. But it's precisely because this process is protracted that we have a long period. We baked in a long period between the confirmation order and this plea agreement. But performing these ministerial tasks are critical to ensuring that the debtors will ultimately emerge and become co-effective after the sentencing once we're authorized to do so.

And what does that mean?

That means that there's multi-hundred million dollar distributions to the opioid abatement trust and to the personal injury compensation trust that we need to start getting the ball rolling. But we fully understand your Honor's concern.

THE COURT: Just talk to me a minute. You're talking about giving large sums of money, pursuant to the plan, to the

trust during this 82-day interval?

MR. KAMINETZKY: Absolutely not. Absolutely, positively, 100 percent not. And this is what we went through with Judge Drain in great, you know, detail.

All we're doing is we're setting up, doing this ministerial task of setting up shell corporations. We're not making any distributions. We're not doing anything that's irreversible, and that's why Judge Drain found -- and this is so critical. We had this discussion with Judge Drain. They moved for a stay in front of Judge Drain, as the rules require.

THE COURT: Right. And he put it off until --

MR. KAMINETZKY: November 9.

And why did he?

Your Honor, November 9 is when the stay hearing occurs. The U.S. trustee is not happy about that. They don't want to have a full evidentiary hearing, which is required under the law. They have the burden of proof, and the law says it's a heavy burden to get a stay. There's going to be witnesses. We've already exchanged witness lists.

THE COURT: Why are there going to be witnesses?

MR. KAMINETZKY: Because the key issue is the balance of harms of a stay or of not a stay, and we have -- and your Honor, and they're sitting in the courtroom. The balance of harms isn't even close here. We're talking about depriving victims, depriving states of abatement funds, but your Honor --

THE COURT: For a few weeks, for a month or two --

MR. KAMINETZKY: But --

THE COURT: -- in a process that has gone on for many years.

MR. KAMINETZKY: Right.

THE COURT: We're not talking about depriving anybody of anything for a long period of time, except the people who lose their claims and they're deprived forever.

MR. KAMINETZKY: OK. Well --

THE COURT: You cannot convince me that a delay of a month or two is so horrible that it outweighs the possibility of equitable mootness.

MR. KAMINETZKY: Your Honor, that's where I'm getting to.

There is no possibility of equitable mootness between now and December 8, at the very earliest. The normal process, as it is the in this -- your Honor knows this well. When your Honor rules and someone appeals and moves to his first stay, who do they go to first?

They go to the district court. The same rules apply here. They go to Judge Drain.

On November 9, Judge Drain has committed to ruling on the stay issue. If they're unhappy with the ruling, they have a month to come before your Honor and continue their stay motion.

What are they doing here now?

This is already scheduled for November 9, a month before the earliest date we can possibly emerge. Why are we litigating in two different fora the exact same issue? The rule is we go to the bankruptcy court first. We're there. We've exchanged witness lists. They then, all of a sudden, on Friday afternoon, file a motion in front of your Honor, Oh, my God, we need a stay.

But your Honor, we're already litigating. Give Judge Drain the chance. You know how Judge Drain works. He already said he will rule on November 9. If they're not happy, we'll come back.

But what are we doing here now?

Judge Drain is going to hear this exact issue.

THE COURT: OK. Then my question for the U.S. trustee is what can possibly happen between now and November 9 that will compromise your interests in any way? That's my question for the U.S. trustee.

MS. LEVENE: Yes, your Honor.

And I have a couple of responses. First of all, while, you know, the debtors say that nothing that they're doing now can support equitable mootness, that doesn't bind the Second Circuit. And while distributions to claimants aren't being made, my understanding is that money is being moved, so the advance order authorized an advance of $297 million, and

the sentencing hearing is before the effective date. Debtors have previously not conceded that they would not make an equitable mootness argument based on that.

THE COURT: I hate to say it, but I've been burned on statutory mootness -- grant you, in *Sears* -- where the debtor said he wouldn't make a statutory mootness argument and then ended up making a statutory mootness argument. And guess what? It was statutorily moot, and there was nothing I could do about it. And that was after I had written a 43-page opinion on the merits.

MR. KAMINETZKY: There's no statutory --

THE COURT: I know, so the debtor can say it won't make an equitable mootness argument, but it can change its mind. So I'm not interested in what the debtor says about whether it will or it won't, but it can't say anything today that binds it.

MR. KAMINETZKY: Your Honor, with respect to the advance, it's un -- the advance motion, the order itself says nothing herein can support an equitable mootness argument. The judge's order says.

THE COURT: That's what Judge Drain said in the *Sears* case about statutory mootness. He said I don't see how that could ever possibly apply here. He was wrong.

MR. HUEBNER: Your Honor --

THE COURT: I understand statutory mootness and

equitable mootness are not the same thing, but they have the same impact. They have the same effect, which is to say they extinguish the appeal.

MR. HUEBNER: Your Honor, may I help for just a moment? I think I can make this very easy.

Between now and November 9, nothing is happening that relies on the confirmation order for its source of authority. No money, not one dollar, is being paid out to claimants, period, end of story. Out of $1 billion of cash and seven to $10 billion in total value, a total of under $6.9 million was going to be used by the estate for ministerial matters to pay fees to begin to set up the boxes to receive funds once we go effective.

We even put unwind provisions into that. It's before a thousandth of one percent of the estate's assets. To be candid, your Honor, a different law firm probably would not have filed the funding motion. All debtors begin preparing for emergence long before they ever get to the confirmation hearing and do many ministerial acts. No court anywhere in the country ever in U.S. history has held that the type of entirely ministerial acts that are being done now give rise to mootness, and that's true all the way until December 1.

Your Honor, we have a hearing on November 9, which precedes that, and the short answer is there is no emergency. The trustee tells you in their opening line of their brief,

which we respect in part, they filed the brief because the Second Circuit, in their view, in an extremely conservative view, requires that no stone be left unturned in being diligent in prosecuting their appeal. I think we can all agree that the U.S. trustee has been extraordinarily diligent. Frankly, we took your Honor's order of the day before that said, in all caps, stop filing papers right now.

THE COURT: Stop filing letters.

MR. HUEBNER: Letters.

So we actually didn't reply because we thought you'd be very upset at us if we burdened you with even more documents.

THE COURT: Oh, I've gotten more.

MR. HUEBNER: We have a 56-page brief ready for Judge Drain being shaped now. It's not only that we say it, because this is a doctrine, not a statutory obligation. The parties stipulated, every party who is an appellee here, including even the Sacklers, on the funding order that no party would ever argue it gave rise to mootness. Everyone in the courtroom agreed it would be a frivolous argument that no case ever handed down supports.

Here, it's actually very easy. Nothing is happening before November 9 except for things that don't even need court authority.

With respect to the funding motion, your Honor, which

could never give rise to mootness, every party has agreed that that peppercorn of the amount of spending in this case could never give rise to mootness. As it happens, there are also unwarranted provisions. A lot of that money has already gone out.

THE COURT: You mean unlike provisions in the event that you lose on appeal.

MR. HUEBNER: Correct, your Honor. If we can't go effective, then we largely unwind the boxes. But ironically, and this is really what's very ironic, these boxes are for victim trusts. Everyone agrees that the victims will get distributions in these cases. Even in what we believe is an unthinkable situation, where this plan does not go effective and we have to start again on a new one, there will still need to be trusts to pay victims, so this is not about the Sackler releases or the confirmation per se of risk plans. This will be even for any plan. But there are already four sets of safety valves. It's an incredibly trivial fund. Everyone agrees it could never give rise to mootness. The judge has so ordered. It probably doesn't even need court authority and can be largely unwound. It's just professional fees to set up trusts to provide information so that the victims of this terrible situation, if we are allowed to go effective, can get paid when available.

Let me give you an easy example, your Honor. The *ad*

hoc committees of the now roughly 38 states -- originally 24 and then 15 flipped -- they and others have been interviewing board candidates for months, long before the confirmation hearings, long before briefs were filed, because the vision always was that a brand-new board and all that would be taking place. That's not in the confirmation order. No one needs the court's authority to do that. There is just nothing happening right now. The trustee has, in its view, done its job, leaving no micro pebble unturned and showing its diligence on appeal, but the reality is there is a four-factor test for an injunction. She said the words at the beginning of her argument, through all layers of appeal, so somehow we're here asking for a multiyear injunction on one day's notice and not even a business day.

THE COURT: I'm considering an application for a stay pending the appeal before me.

MR. HUEBNER: Understood, your Honor.

THE COURT: I'm considering it.

MR. HUEBNER: Understood.

THE COURT: I don't tell the Second Circuit what they can and can't do in terms of stays.

MR. HUEBNER: Your Honor, the good news is --

THE COURT: That's the way it works.

MR. HUEBNER: -- the reason we put the schedule right in the order was because this is actually very easy. It's

over. You've set oral argument for November 30. We can't emerge until probably two weeks after that in the real world, so there is already time. We can revisit this in three or four or five or six weeks, but right now, irreparable harm, there's no conceivable harm. There isn't even a peppercorn of harm because the only potential harm at all is the possible risk of mootness. And again, we can talk on another day about how the law works and whether that counts, but even if it does, there is no possible mootness. None.

Your Honor, to be clear, and one of the reasons why --

THE COURT: Can I interrupt for a moment? You say everybody agrees. Where is this stipulation?

MR. HUEBNER: Sure.

Your Honor, we represented it on the record. When Judge Drain had a scheduling conference and said I don't see any emergency need for a bridge order, nothing is happening right now, we actually had this oral argument. And what was the scheduling conference, sort of like this one, a little bit turned into the oral argument on the need for an emergency bridge order, and each of the parties, in fact, the easiest way to think about it, your Honor, maybe, is there are two sets of two on the appellees' side. There are two for these hearings, the debtors and the committee. There are two sets of governmental creditors, representing almost every government in the country. 4,924 governments voted on this plan --

governments, not individuals -- and had a 97 percent acceptance rate. One is the *ad hoc* committee of the governmental creditors that largely speaks for a majority of the states. The other is the multi-state governmental entities group, which largely speaks for the municipalities. You have two fiduciaries, two governmental groups.

Then the individual victims are largely split along two, NAS children and the adult PI's represented by Mr. Shore. Those are the private and those are the actual victims, which also makes this ironic. The U.S. trustee keeps claiming to speak for victims when the victims are right here, and then the final two, who are very different in kind because the rest of us are plaintiffs and the Sacklers are the defendants and we were getting ready to sue the Sacklers for many billions of dollars had the creditor groups not settled.

The A side and the B side are the last pairing. All of those parties, every one of them, agreed and represented and we've been here the whole case.

THE COURT: And you can print out those pages of the transcript and show them to me.

MR. HUEBNER: Sure, and our brief, your Honor, if your view --

THE COURT: A 56-page brief.

MR. HUEBNER: Well, it would need to be modified, your Honor. We've been hit with quite a few filings.

THE COURT: I know.

MR. HUEBNER: That's actually one of the arguments we make to you, is that this has already been ruled upon.

Let me say this, your Honor, so there's no doubt of any kind.

THE COURT: (inaudible) by Judge Drain and you can consider this an appeal.

MR. HUEBNER: But your Honor, here's how we think about it, so there's no misunderstanding at all.

We want you to rule. One of the reasons we are opposing direct certification, among others -- one of the reasons, among others, that we do not support direct certification is because your order's made it clear you would move quickly, and there are hundreds of thousands of real people here who want this plan and need this plan. And so it was for that reason that the schedule just lays out perfectly, because nothing is happening except de minimis ministerial actions between now and December. Your Honor has already pledged to hear us on November 30, which is what we want.

There was never a vision, as you'll see the minute you start seeing pleadings from us, to moot your ruling, ever, which is why we found this motion extraordinary and extraordinarily unnecessary. As you saw from the schedule, we proposed a schedule faster than most of the appellants precisely because we want a ruling in the time that we hope

will be sufficient, and if we get to December and your Honor says I need another ten days, another trial's come up, an emergency, this is very complicated, I can't rule until December 14, at least on the debtor side, your Honor, not going to be another choice because you're the judge, we would accept that in a heartbeat.

We're trying to balance, as the fiduciary for all parties, the fact that 1-1,000th of our creditors are seeking a stay. The other 99.99 percent are not. That's the highest voter turnout in chapter 11 history, and ten *ad hoc* groups representing every possible (inaudible) stakeholders voted overwhelmingly in favor of the plan. A small number of people have a different vision, and there's a lot to talk about. But your Honor, to be fair to the actual victims, tens of thousands of whose counsel is in the room and the vast majority of the states whose counsel is in the room, (inaudible) dominated obviously, as it often does, by the appellants' opening salvos. But a TRO and a stay are emergency extraordinary motions in which all four factors bear an evidentiary burden on the movant. The movant has no evidence. They have a concern that, maybe, possibly, they might run an incremental risk of equitable mootness, and they just are not correct.

And if your Honor wants a stipulation, we will draft one this afternoon. Every appellee will sign a stipulation that says we hereby swear for all time that nothing that

transpires prior to December 1 could ever give rise to mootness, nor will we ever so assert, and your Honor can sign it. Judge Drain can sign it. We can just show it to you.

There's no real issue here. Everyone understands that the real mootness issues, if they are even legally cognizable as supporting a stay, begin in December. Judge Drain a going to have a hearing, and your Honor, there will be witnesses. There will be state attorney general witnesses on our side, because, in fact, the harms are much more serious than the U.S. trustee's leading you to believe. But again, that's not today's issue. Today's issue is, is there an emergency that requires --

(Indiscernible overlap)

THE COURT: -- no irreparable harm at this moment.

MR. HUEBNER: Correct, your Honor. And the day may come -- I'm not saying it won't -- when the decision about mootness versus effectiveness might have to be decided. That day is more than six weeks away.

MR. KAMINETZKY: (inaudible) given all that from the normal process --

THE COURT: OK.

MR. KAMINETZKY: -- of having the trial court rule on the state issues and then your Honor, as the appellate court, if necessary, can review after having seen the developed record of the evidence and of everything else that Judge Drain has

committed to completing on November 9.

MR. HUEBNER: Your Honor, let me say one last thing, if I may, and I apologize a little bit for the tag team.

Obviously, this is a case of almost unthinkable complexity. The U.S. trustee made quite a few statements in their oral arguments, and one of dangers when one side files a big brief and you didn't is that things get even slightly locked into the judge's mind. So if I could just have 90 more seconds, I promise it will not be more than that, I just want to be very clear a few things, and I will leave it at that, unless the Court has questions.

No. 1, the issue, the allegation of inadequate notice that the U.S. trustee makes is literally mind-boggling. There are factual findings by Judge Drain.

THE COURT: I've read Judge Drain's opinion.

MR. KAMINETZKY: Done. But they've said they're --

THE COURT: I've read Judge Drain's opinion.

MR. HUEBNER: Understood. The second issue, your Honor, they misdescribe the releases, frankly, again and again.

THE COURT: Well, somebody better describe them to me, because I don't understand them.

MR. HUEBNER: Your Honor, we will, but let me make it very easy. With an infinitesimally small exception that we believe requires the overlap of two different null sets, no third-party claims against the Sacklers is being released that,

by a party who does not also hold a claim against the debtors. I'm not sure what class action -- after first saying she doesn't know what it says, but then she actually went on to say what she hoped it said, that maybe some people somewhere alleged that the Sacklers somehow have liability unrelated to the debtors. We've been at this for three and a half years, your Honor, and we don't know of any such claim.

The plan was tailored at Judge Drain's demand. It used to say holders of claims and causes of action can be deemed releasing parties. Judge Drain rejected that. One of the six changes that was made in the final days was to narrow and narrow and narrow the releases. You have to be a holder of a claim against the debtors to have released your claims against the Sacklers, with, as I said, only one exception, which no one has ever identified as possibly even theoretically containing a claimant, which relates to a hypothetical, possible future claim not yet asserted that relates to products already in the stream of commerce that is also a claim against the Sacklers that is not also a claim against Purdue.

We actually don't think either of those categories exist. When I say we, your Honor, let me be very clear, because pronouns can be very tricky things, and people often obfuscate when they speak to a court or write emails or letters what their pronouns. Let me be very clear. We mean the PI victims who have counsel in this case and have an *ad hoc*

committee that has represented them for years; the MDL PEC, which was appointed by Judge Polster and is part of the *ad hoc* committee that represents the huge umbrella group in the MDL the official committee of unsecured creditors -- there is a fiduciary for every creditor in this case -- and the debtors, who are fiduciaries for all.

THE COURT: Understood. All understood. All understood, and I thank the U.S. trustee's reference to class actions was to the fact that if this were still in front of my old law school classmate Judge Polster, the people who are so ably represented in this court would have an opportunity to say: You know what? I don't want to be here. I want to bring my own lawsuit. I don't like this. I don't want to be represented by these people.

And that's not what's happening here, and I think that that is the essence of the U.S. trustee's class action argument.

MR. HUEBNER: Your Honor, we agree, and if they were in one of the seven circuits that has upheld third-party releases being extraordinary circumstances in bankruptcy cases, that argument would not prevail. And the Second Circuit -- and we'll talk about that a lot, I think, next month.

THE COURT: We'll talk about that a lot.

MR. KAMINETZKY: -- is, we believe, clearly one of those. If we were in one of the few circuits that essentially

said what one could argue is the analytic equivalent of a nonopt-out class action cannot be obtained through the bankruptcy system, then none of us would be here because we'd have a different plan and it would probably be unthinkably worse for all creditors, because your Honor, one of the things that you're seeing here, which unfortunately, the more you peel, the more complicated it gets, there are over 25 intercreditor settlements embodied in the plan. So when the U.S. trustee told you, as she did a few minutes ago, Oh, the victims aren't getting paid from the money coming in from the Sacklers, that is untrue, because --

THE COURT: I didn't quite hear that.

MR. HUEBNER: No, your Honor. The phrase she used was --

THE COURT: We're now too much into the weeds.

MR. HUEBNER: Agreed.

THE COURT: OK? We're now too much into the weeds for me. I've only been in the case for a few days.

MR. HUEBNER: Agreed. Let me back right out, because in the end, I can end where I started, unless the Court has any questions.

There is no possible, credible, nonsanctionable claim that anything happening between now and December 1 could possibly give rise to mootness, and the possible potential risk of mootness is the only allegation of potential harm. Even if

I give them all three other factors, there is no harm, and in whatever way this Court wants comfort, from every single appellee, that that view is forever and signed and guaranteed, we will do so. And if we're approaching December and there's a potential risk, I guess -- I actually don't think that will happen because, frankly, your Honor's passion for speed and understanding of the desperate needs of this case is extraordinarily acute.

THE COURT: Well, look, I understand that it has to go fast, and I understand that it's all important.

Let me hear from the U.S. trustee. It's her motion.

MS. LEVENE: Your Honor, thank you.

Your Honor, what we've just heard all relates to the advance order. It doesn't relate to the confirmation order, and so I think that needs to be clear, that what they're talking about is all -- you know, they're saying they don't even need the confirmation order for what they're doing right now. So none of that is an argument against staying a confirmation order.

But the other thing we heard was that the key date is December 1, which is not the effective date.

THE COURT: Actually, what they said December 8, but by December 1, if nothing had happened or if I thought I was going to have a hard time getting a decision out, that maybe then I would entertain a motion for a stay. Or actually, I

think what he really said was Judge Drain's going to hear this on November 9 anyway.

MR. HUEBNER: Correct.

THE COURT: And if he rules against a stay, you'll take an appeal and it will be a lot closer to December by then and I might look at the equitable injury point differently. That's, I think, what he said.

MR. HUEBNER: Yes, your Honor. Exactly.

MS. LEVENE: Your Honor, there's two dates. The earliest effective date is December 8 and the sentencing date December 1, and my understanding of what Mr. Huebner has been saying is that December 1 is a critical date and that he is not --

THE COURT: It's a critical date because the earliest effective date is tied to the sentencing date. But if the sentencing doesn't happen until January, then I guess the earliest effective date may be in January.

MR. HUEBNER: That's exactly the point, your Honor. December 1 could become December 4 or December 9 or December 12. But it's sure awfully after December 9, and we know that already, and that's why the burden of extraordinary harm and public --

THE COURT: OK. Got it, got it, got it. Let me listen to her.

MS. LEVENE: So, we haven't heard a reason why the

confirmation order should not be stayed.

THE COURT: But yes, you have. You've heard a reason. The reason is there's no irreparable harm because we aren't going to be able to do anything that is authorized, for which our authority derives from the confirmation order, until at least the middle of December. That's what they said. So why do you need an injunction in the middle of October, especially when you're going to see it again in the middle of November?

MS. LEVENE: Your Honor, two things.

While we appreciate everybody's stipulations, as you pointed out, that does not bind the Second Circuit with respect to what's going on now.

THE COURT: Well, actually, no. What I was pointing out was in my case, dealing with another form of mootness, what Judge Drain opined and what the lawyers represented to Judge Drain turned out to be of no moment because the lawyers' client's interests changed and the lawyer did what was in his client's interests and not what he told Judge Drain he would not do.

MR. HUEBNER: Which is why we're willing to be bound, your Honor, in any way anyone --

THE COURT: OK. Fine.

MS. LEVENE: Your Honor, equitable mootness is a judgment doctrine.

THE COURT: Yes.

MS. LEVENE: That stipulation cannot bind the Court to look at this and take a different --

THE COURT: Just thinking this out loud, but the only stipulation that I would accept is a stipulation that the argument will not be raised at any time in any court.

MR. KAMINETZKY: Your Honor --

THE COURT: Wait a minute. You don't need to talk.

MR. KAMINETZKY: Oh, sorry.

THE COURT: And going back to Judge Jacobs, who wrote this incredibly long opinion on what turned out to be utterly irrelevant issues in *Metromedia* and then talked about equitable mootness, the reason, he said, that he was opining on all those ultimately irrelevant issues was because they might have some bearing on what is equitable. OK? So I guess it's possible that there's some three-judge panel in the Second Circuit that would not find it inequitable if somebody went back on his word. But the difference between equitable mootness and statutory mootness is it wasn't in the statute. If it's in the statute, you can't get around it. And equity requires that you behave, so I think, I believe that's the essence of the argument.

MS. LEVENE: I understand the argument, your Honor. Our concern is, of course, none of that is binding on --

THE COURT: Understood.

MS. LEVENE: -- Second Circuit.

THE COURT: You're saying if the circuit could raise equitable mootness *sua sponte* and would do so, that's what you're now afraid of, that the circuit will raise the question of equitable mootness *sua sponte*.

MS. LEVENE: If every party actually were to stipulate that they would never raise it, yes, that is a concern. But we are also concerned, your Honor, about, you know, again, December 1 --

THE COURT: I still want to know what's going to happen between now and November 9. In the end, my dear friend, my former law partner, Judge Drain, has a hearing on this for November 9. So I'm more focused on what's happening between now and November 9 than I am on what's happening between November 9 and December 1, because if I don't like Judge Drain's ruling and you come back, I can always undo that, unless you're in the circuit, in which case you're at their mercy.

MS. LEVENE: And what is happening is they're setting up the trusts. There's money as been described, being paid to professionals. It's, you know, building technology, paying for the services for these trusts. There's disclosure of PI data that we talked about, and of course, we're concerned about how they --

THE COURT: PI data being?

MS. LEVENE: Excuse me?

THE COURT: PI data being what, identifying information?

MS. LEVENE: Personal information, including names and social security numbers.

THE COURT: Thank you.

MS. LEVENE: Birth dates, that kind of thing.

THE COURT: OK.

MS. LEVENE: And we want to ensure that there is time, of course, to bring this up to an appellate court, whether it's this Court or the Second Circuit, if we don't get the stay, that there is time to do that. So we would want --

THE COURT: Since you're either going to get the stay or not get the stay this week, I think you have time to bring it to the circuit. You can go next week. You want to be there anyway. Right?

MS. LEVENE: Yes, your Honor. If we got a decision up or down --

THE COURT: I mean I'm not going to sit on this for five weeks.

MS. LEVENE: As opposed to deferring to Judge Drain's decision, you know, a hearing in November.

THE COURT: OK. I get it. I get it. OK.

MR. KAMINETZKY: Your Honor --

MS. LEVENE: I don't want to get to a point where they've set up everything that they need to to flip a switch

and then they flip the switch and they go forward to sentencing or they go forward with the equitable -- the effective date, and suddenly, we're out of luck.

THE COURT: In a hypothetical world, where the Second Circuit doesn't take this, you're sitting here on the 30th of November and we're all talking about this stuff, and the sentencing is scheduled for December the 1st and you stand up and say, Judge, they can flip a switch, what makes you think I wouldn't stay it then?

MS. LEVENE: Your Honor --

THE COURT: I've already written one opinion in bankruptcy that I had to undo because of the stupid mootness issue. So what makes you think I would want to run that risk again?

MS. LEVENE: I understand, your Honor.

THE COURT: Hypothetically.

MS. LEVENE: If we're in that position, that's, you know, what we'll do. And you know, we need to make sure we know sufficiently in advance to be able to come and do that.

THE COURT: Agreed.

MS. LEVENE: But we are --

THE COURT: Absolutely agreed.

MS. LEVENE: We are concerned that there's no guarantees of how the Second Circuit would view the actions being taken now.

THE COURT: OK. All right.

Now, you wanted to say something, for the state of Washington, *et al.*

MR. GOLD: Thank you, your Honor.

THE COURT: Hello, Mr. Gold.

MR. GOLD: Your Honor, I just want to observe that Mr. Huebner made some eloquent statements about the position of the debtors with respect to how I would just generally characterize how the events that he's referring to could not lead to equitable mootness; he never would argue that it would lead to equitable mootness, ought to be bound to that statement, and I just think it would be helpful for the record because all of the other parties who are claiming they are appellees who are here in the courtroom, it would be helpful for them to state for the record that they agree with Mr. Huebner's position rather than have the Court simply take what Mr. Huebner's articulated and have some other party say I didn't say anything at the hearing, I reserved the right to --

THE COURT: Oh, believe me. If it came to that, it would have to be in writing, signed by everybody, or there would be --

MR. GOLD: Thank you, your Honor.

MR. ECKSTEIN: Your Honor, may I be heard?

THE COURT: Mr. Eckstein.

MR. ECKSTEIN: Your Honor, good afternoon.

On behalf of the *ad hoc* committee of governmental claimants, thank you for the opportunity to be heard, your Honor.

Your Honor, I do not think I need to belabor what has already been a long hearing. I'm not going to try not to repeat. Mr. Huebner, I believe, has very, very effectively and accurately described the sentiments of all of the parties on the appellees' side. I do respect Mr. Gold's comments, and I do want to try to appeal to your Honor to make sure you appreciate what is actually happening over the near term.

First of all, I'm going to respond directly to Mr. Gold's suggestion, and I'm going to represent on behalf of my client that we completely subscribe to the view that the events that are taking place over the next few weeks, the ministerial acts, the ordinary-course steps that are being taken to prepare the company in the event we have the opportunity to emerge will not be a basis for my clients to assert equitable mootness in any court, and that should be unequivocal. And that was our position several weeks ago in front of Judge Drain. That was included in Judge Drain's order and it should be represented again here so your Honor knows that is the case, and I agree it should be done in writing, because it's an important issue and there should be no confusion.

The reason, your Honor, why I rise to make it clear

that is our view is because it is, in fact, critical to the work that we've been doing over the past two years in this case and in particular over the last several months. It is critical to allow us to continue to at least move this case to a position where, assuming ultimately the order is affirmed, we have the ability to go effective, because it is critical that this plan go effective. Every month of delay is costing tens of millions of dollars for this estate.

What are we doing over the next couple of weeks?

Your Honor, in my case, for example, we're in the process of interviewing very, very significant individuals who are being considered to become members of the board of the new company that will be created out of old Purdue. That is a very significant responsibility. We're dealing with people of national reputation. We have an outside search firm that has been doing this for months. And your Honor, respectfully, there's concern that in the face of a stay imposed by your Honor, we may be precluded from taking any further steps to complete the seating of this board.

Now, obviously, the board's not going to take any responsibility for this company until the plan goes effective, but I think as your Honor can appreciate, it takes weeks, if not longer, to get people comfortable with taking this responsibility on. What does it mean, dealing with the posteffective date insurance, all of the other factors that go

into setting up a new company?

There are trusts that are being created. We have to identify trustees who will be responsible for disbursing billions and billions of dollars to the states, municipalities, the hospitals, the third-party payors and the individuals, each of whom are beneficiaries of this plan. This is a complicated infrastructure. All we want to make sure is that we have the ability not to lose precious time.

One of the important parts of this settlement was a conclusion by all the parties who support it that it is time to put the billions of dollars that we have available through this plan to the benefit of abating the opioid crisis. It's taken a long time, because as Mr. Huebner said, this case is the product of scores of individual settlements that have been reached between multiple constituencies. My clients dedicated themselves for two years, working with the UCC, working with the debtors, working with the MSGE, working with all the other private groups to reach settlements as to how we can try to implement a plan.

That was a very, very monumental task, and remarkably, it was done consensually. And I think as your Honor appreciates, that is not always the case, but it was done consensually, which is the reason why the only issue, the only real issue that your Honor is going to have to contend with is whether or not the legal issue of the third-party release, all

the other issues essentially were resolved. So we genuinely are hoping that we will have the ability for this plan to go effective, and we urge the Court to give us the flexibility that we believe is reasonable to take these ministerial steps based upon the understanding that all of the appellees in this case, the debtors, UCC and everybody else, is going to confirm, orally and in writing, that none of these steps are going to give rise to an argument for equitable mootness, and I wanted to make sure that that is clear.

At the appropriate time, your Honor, as Mr. Huebner says, we'll describe for your Honor the billions of dollars that we've negotiated to come out -- to come out -- from both Purdue and from the Sacklers as part of this settlement for the benefit of abating the opioid crisis and for the benefit of paying the individual private creditors who are the beneficiaries of this plan. And we believe that staying that -- once the plan can go effective, we believe staying that will cause dramatic, dramatic harm. But that is not something that we have to confront today. All we want to focus on today is making sure that we have the ability to continue to put the building blocks in place, none of which -- none of which -- will give rise to equitable mootness, and we believe that therefore there shouldn't be a stay of those items, coupled with the representation that we can't go effective, as your Honor has heard, until early December.

THE COURT: OK.

MR. ECKSTEIN: Hopefully that's a little bit of context.

THE COURT: Got it.

MR. ECKSTEIN: I don't want to be --

THE COURT: I've got it.

MR. HUEBNER: Your Honor, let me make it a bit easier.

We're happy -- the debtors are in sole control of sending further funds out under the funding motion. As it happens, as I described before, it's entirely for ministerial items, and most of it has already gone, because the order was entered weeks ago. If your Honor would be more comfortable having the debtors not use the small amounts of remaining money under that order, we'd be happy to. That's the only thing we know of that is actually happening. But your Honor, to be clear, we're sort of in a double through the looking glass world right now.

Equitable mootness is a doctrine that says that when there's a comprehensive, irreversible change in circumstances that cannot possibly be undone, that's the effective date of a plan.

THE COURT: I know that.

MR. HUEBNER: Courts have said that for 25 years.

THE COURT: I know that.

MR. HUEBNER: And the second thing, your Honor, is you

keep asking what is happening before November 9 that is an emergency that I need to issue an extraordinary order to stop, and the answer is nothing.

THE COURT: OK.

MR. HUEBNER: It's just that simple.

THE COURT: OK. All right.

MR. ECKSTEIN: Your Honor, thank you very much.

THE COURT: I've got what I need.

If you must.

MR. EDMUNDS: Your Honor, very briefly.

I would just like to note we weren't sure what to do following this Court's order Sunday night. We have, the states have slightly different arguments and slightly, have articulated different reasons in their own stay motions before the bankruptcy court, and I think just one of them at least is relevant here, and that is that this -- the states that have objected to this settlement. Those states believe that the settlement is not adequate to do what we need to do to rein in the opioid crisis the conduct has created.

THE COURT: OK.

MR. EDMUNDS: Courts have held that any time that we are enjoined from exercising our police powers there is irreparable harm, but the bigger irreparable harm may be what if everyone is wrong.

THE COURT: People, people, I've really --

MR. EDMUNDS: What if -- I mean no one is guaranteeing, and I might agree that it's unlikely the actions in the next month will equitably moot the case, but what if we're all wrong? A court can't determine the preclusive effect of its own judgment. I've cited that many times in a different area of the law, but I think the same principle is applicable here. What if we're wrong? There may be a harm that comes from the fact that we haven't gotten enough or we haven't deterred conduct sufficiently to take care of this massive crisis that we face. And that's an additional concern that the states have that I think warrants, given the significance of this case to the public health, a stay so that we know that we are going forward with the right plan when we are, the plan that will ultimately be approved and we do not run the risk that we're going forward with one that is wrong and that we'll be stuck with all the same.

Thank you, your Honor.

MR. HUEBNER: Your Honor, with respect to Mr. Edmunds, I'm actually so glad he spoke up, because what it shows even more clearly than until a few minutes ago is that there are different arguments on the propriety of the stay that no one has even briefed yet. As it happens, we're ready to explain those relevant cases to Judge Drain because we think they do not remotely stand for the principle for which Mr. Edmunds cited them, but the whole point is he hasn't even filed his

papers yet in this court because they're down below before the trial court who is ready to hear this in three and a half weeks where we can actually have due process. And that's the ultimate irony, that many of the appellants' core position is a denial of due process in some cases on behalf of people who do not exist, and we will show this Court that on the merits, that the alleged victims U.S. trustee's seeking to protect don't exist. But the appellees also deserve due process.

THE COURT: Mr. Huebner, please.

MR. HUEBNER: Thank you, your Honor.

THE COURT: Yes, sir.

MR. SHORE: Your Honor, very briefly.

On behalf of the *ad hoc* group of individual victims, I just want to focus on one thing that's getting lost, and it sounds like Mr. Huebner was willing to give it away when he says we're not going to spend any more money on advances. We were the ones who came up with the advances order. We drafted the motion for the debtors and we asked them to file it, and it was to address one irony in all this case. Everybody else in this room is either being funded through the debtors' estate, all of their fees and expenses, or is a state or the federal government.

We are a group of individual victims out of whose money, out of whose pockets any money needs to be spent to start advancing. So we came to the debtors with a very

definitive budget of $4,012,500, broken down into categories I can bring to your Honor, all of which needs to be spent before the trust can get up and running and get money out to victims. No one's going to say here that victims should be denied money when it's ready to go, and every day that we're delayed in spending money on getting this up and running is a day that victims won't get money.

So I'm just going to implore your Honor that we don't need a stay of this. It's $4,012,500, which is probably about a week of money that the debtors are spending on the professionals in this room, because everybody's getting funded. We're not. If we don't get the money, we can't do it. If we don't do it, there's going to be more delay. So I haven't heard an argument, particularly when the order itself by which the debtors were given authority to advance the money to us, any argument as to how that's going to scramble an egg or do anything else when the order itself says that no party can rely on it for equitable mootness, which is something we were, of course, willing to give up because who would ever argue that.

So as they exist right now, I think the TRO would prevent the debtors from doing that, and as I said, I implore your Honor, there is no need to extend that order, because that is just keeping money out of the hands of victims if we're right in the appeal, which we think we are.

THE COURT: Which you think you are and other people

think you're not, and the one thing I won't compromise is my ability to decide that. OK? At least until you take it away from me and send it to a different court and then they can do whatever they want.

You'll have a decision tomorrow. The TRO's extended for one day, and that's that.

Thank you. Very educational.

What else do we have on the agenda today?

MR. KAMINETZKY: Your Honor, that was our last agenda item.

THE COURT: Oh, really. That's wonderful.

I've chaired many meetings over the last five years. Do we have any new business?

Good. I'm delighted. Excellent.

It is a pleasure meeting you all. It was lovely seeing some of your faces. It will be great to work with you if that's the way it comes out, and someone should let me know what happens on Thursday with Judge Drain. OK?

All right. Great. Thank you, all, very much.

Thank you, California, for being here.

MS. LEVENE: Thank you, your Honor.

(Adjourned)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 19-23649-rdd
- x
In the Matter of:

PURDUE PHARMA L.P.,

Debtor.
- x

United States Bankruptcy Court
300 Quarropas Street, Room 248
White Plains, NY 10601

November 9, 2021
9:49 AM

B E F O R E :
HON ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

ECRO: ART

HEARING re Order signed on 11/3/2021 Establishing Procedures for Remote Hearing on Motions for Stay Pending Appeal with hearing to be held on 11/9/2021 at 10:00 AM at Videoconference (ZoomGove) (RDD)

HEARING re Notice of Agenda / Agenda for November 9, 2021 Hearing

HEARING re Motion for Stay Pending Appeal / Memorandum of Law In Support of United States Trustees Expedited Motion for a Stay of Confirmation Order and Related Orders Pending Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007 (related document(s)3777, 3776) filed by Linda Rifkin on behalf of United States Trustee. (ECF #3778)

HEARING re Objection to Motion / Ad Hoc Committee's Objection to Stay Motions (related document(s)3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4002)

HEARING re Opposition Tribal Group Joinder in Opposition to Stay Motions filed by Peter D'Apice on behalf of Certain Native American Tribes and Others (ECF #4003)

HEARING re Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #4006)

HEARING re Opposition The Ad Hoc Committee of NAS Children's Joinder to Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Harold D. Israel on behalf of Ad Hoc Committee of NAS Babies. (ECF #4009)

HEARING re Opposition Joinder of the Private Insurance Ratepayers to Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)3801, 3873, 3789, 3845) filed by Nicholas F. Kajon on behalf of Eric, Hestrup, et al. (ECF #4010)

HEARING re Opposition /Joinder (related document(s)4006) filed by Lauren Guth Barnes on behalf of Blue Cross Blue Shield Association. (ECF #4011)

HEARING re Objection to Motion /The Ad Hoc Group of Individual Victims' (I) Objection to the United States Trustee's and Certain Public Creditors' Motion for Stay Pending Appeal and (II) Joinder in the Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)3873, 3972, 3789, 3845) filed by J. Christopher Shore on behalf of Ad Hoc Group of Individual Victims of Purdue Pharma L.P. (ECF #4012)

HEARING re Memorandum of Law/Debtors' Memorandum of Law in Opposition to the Motions for Stays of the Confirmation Order and the Advance Order Pending Appeal (related . document(s)3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845) filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #4014)

HEARING re Opposition of the MSGE Group to the Motions to Stay Pending Appeal (related document(s)3801, 3873, 3890, 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of Multi-State Governmental Entities Group. (ECF #4016) Opposition - Joinder to the Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Michael Patrick O'Neil on behalf of Ad Hoc Group of Hospitals. (ECF #4017)

HEARING re Reply to Motion Reply in Support of United States Trustee's Motion for a Stay of Confirmation Order and Related Orders Pending Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007 (related document(s)3801, 3972, 3778) filed by Paul Kenan Schwartzberg on behalf of United States Trustee. (ECF #4050)

Related Documents:

Order signed on 9/15/2021 Granting Motion (I) Authorizing the Debtors to Fund Establishment of the Creditor Trusts, the Master Disbursement Trust and Topco, (II) Directing Prime Clerk LLC to Release Certain Protected Information, and (III) Granting Other Related Relief (Related Doc# 3484). (ECF #3773)

HEARING re Motion to Shorten Time United States Trustees Ex Parte Motion For An Order Shortening Notice And Scheduling Hearing With Respect To The United States Trustees Expedited Motion For A Stay Of Confirmation Order And Related Orders Pending Appeal Pursuant To Federal Rule Of Bankruptcy Procedure 8007 (related document(s)3 778) filed by Linda Riffkin on behalf of United States Trustee.(ECF #3779)

HEARING re Modified Bench Ruling On For Confirmation Of Eleventh Amended Joint Chapter 11 Plan Signed on 9/17/2021. (ECF #3786)

HEARING re Findings Of Fact, Conclusions Of Law, And Order Confirming The Twelfth Amended Joint Chapter 11 Plan Of Reorganization Of Purdue Pharma L.P. And Its Affiliated Debtors Signed On 9/17/2021 (related document(s)3726). (ECF #3787)

HEARING re Amended Motion for Stay Pending Appeal/ Amended Memorandum of Law In Support Of United States Trustee's Expedited Motion For A Stay Of Confirmation Order And Related Orders Pending Appeal Pursuant To Federal Rule Of Bankruptcy Procedure 8007 (related document(s)3799, 3777, 3776, 3778, 3779) filed by Linda Riffkin on behalf of United States Trustee. (ECF #3801)

HEARING re Motion to Stay/ Memorandum of Law in Support of United States Trustee's Expedited Motion to Extend the Automatic Stay of the Confirmation Order and for a Limited Stay of the Related Orders Pending Resolution of His Expedited Motion for a Stay Pending Appeal (related document(s)3786, 3787, 3773) filed by Linda Riffkin on behalf of United States Trustee. (ECF #3803)

HEARING re Motion to Shorten Time I United States Trustees Ex Parte Motion for an Order Shortening Notice and Scheduling Hearing with Respect to the United States Trustee's Expedited Motion to Extend the Automatic Stay of the Confirmation Order and for a Limited Stay of the Related Orders Pending Resolution of His Expedited Motion for a Stay Pending Appeal (related document(s)3803) filed by Linda Riffkin on behalf of United States Trustee. (ECF #3804)

HEARING re Statement/ Notice of Listen-Only Dial-in for Status and Scheduling Conference (related document(s)3779) filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #3838)

HEARING re Motion for Stay Pending Appeal / Second Amended Memorandum Of Law In Support Of United States Trustees Amended Expedited Motion For A Stay Of Confirmation Order And Related Orders Pending Appeal Pursuant To Federal Rule Of Bankruptcy Procedure 8007 (related document(s)3801, 3778) filed by Brian S. Masumoto on behalf of United States Trustee. (ECF #3972)

HEARING re Motion for Stay Pending Appeal/ Blackline Second Amended Memorandum Of Law In Support Of United States Trustees Amended Expedited Motion For A Stay Of Confirmation Order And Related Orders Pending Appeal Pursuant To Federal Rule Of Bankruptcy Procedure 8007 (related document(s)3972) filed by Brian S. Masumoto on behalf of United States Trustee. (ECF #3973)

HEARING re Objection to Motion / Ad Hoc Committee's Objection to Stay Motions (related document(s)3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4002)

HEARING re Declaration of Cheryl Juaire in Support of the Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #4007)

HEARING re Declaration of Kara Trainor in Support of the Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #4008)

HEARING re Motion to Allow/ Debtors' Motion for Leave to Exceed the Page Limit in Filing Memorandum of Law in Opposition to the Motions for Stays of the Confirmation Order and the Advance Order Pending Appeal filed by Marc Joseph Tobak on behalf of Purdue Pharma L.P. (ECF #4013)

HEARING re Declaration of Jesse DelConte (related document(s)4014) filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #4015)

HEARING re Opposition of the MSGE Group to the Motions to Stay Pending Appeal (related document(s)3801, 3873, 3890, 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of Multi-State Governmental Entities Group. (ECF #4016)

HEARING re Amended Statement Supplemental Designation of Record in Rebuttal and in Support of United States Trustee's Second Amended Expedited Motion for a Stay of Confirmation Order and Related Orders Pending Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007 (related document(s)3972) filed by Paul Kenan Schwartzberg on behalf of United States Trustee. (ECF #4043)

HEARING re Motion to Allow Motion to Exceed Page Limit in Filing Reply in Support of United States Trustee's Motion for a Stay of Confirmation Order and Related Orders Pending Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007 filed by Paul Kenan Schwartzberg on behalf of United States Trustee. (ECF #4049)

HEARING re Motion for Stay Pending Appeal (related document(s)3786, 3787, 3773) filed by Matthew J. Gold on behalf of State of Washington.(ECF #3789)

Responses Received:

Objection to Motion/ Ad Hoc Committee's Objection to Stay Motions (related document(s)3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4002)

HEARING re Opposition Tribal Group Joinder in Opposition to Stay Motions filed by Peter D'Apice on behalf of Certain Native American Tribes and Others. (ECF #4003)

HEARING re Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)3801, 3873, 3789, 3845) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al.(ECF #4006)

HEARING re Opposition The Ad Hoc Committee of NAS Children's Joinder to Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Harold D. Israel on behalf of Ad Hoc Committee of NAS Babies. (ECF #4009)

HEARING re Opposition Joinder of the Private Insurance Ratepayers to Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)3801, 3873, 3789, 3845) filed by Nicholas F. Kajon on behalf of Eric Hestrup, et al. (ECF #4010)

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HEARING re Opposition - Joinder to the Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Michael Patrick O'Neil on behalf of Ad Hoc Group of Hospitals. (ECF #4017)

Related Documents:
Modified Bench Ruling On Confirmation Of Eleventh Amended Joint Chapter 11 Plan Signed on 9/17/2021. (ECF #3786)

HEARING re Findings Of Fact, Conclusions Of Law, And Order Confirming The Twelfth Amended Joint Chapter 11 Plan Of Reorganization Of Purdue Pharma L.P. And Its Affiliated Debtors Signed On 9/17/2021 (related document(s)3726). (ECF #3787)

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HEARING re Objection to Motion I Ad Hoc Committee's Objection to Stay Motions (related document(s)3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein I on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4002)

HEARING re Declaration of Cheryl Juaire in Support of the Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #4007)

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HEARING re Reply to Motion Reply in Further Support of Motion of the States of Washington and Connecticut for a Stay Pending Appeal filed by Matthew J. Gold on behalf of State of Washington. (ECF #4051)

HEARING re Motion for Stay Pending Appeal of Confirmation and Trust Advances Orders filed by Brian Edmunds on behalf of State Of Maryland. (ECF #3845)

Responses Received:

Objection to Motion/ Ad Hoc Committee's Objection to Stay Motions (related document(s)3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4002)

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HEARING re Reply to Motion for a Stay of Confirmation and Trust Advances Orders Pending ;I Appeal (related document(s)3801, 3973, 3873, 3972, 3789, 3778, 3860, 3803, 3845) filed by Brian Edmunds on behalf of State Of Maryland. (ECF #4048)

HEARING re Related Documents:
Order signed on 9/15/2021 Granting Motion (I) Authorizing the Debtors to Fund Establishment of the Creditor Trusts, the Master Disbursement Trust and Topco, (II) Directing Prime Clerk LLC to Release Certain Protected Information, and (III) Granting Other elated Relief (Related Doc# 3484). (ECF #3773)

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HEARING re Motion for Stay Pending Appeal (related document(s)3810, 3847) filed by Ronald Bass Sr. (ECF #3860)

HEARING re Responses Received:

Objection to Motion/ Ad Hoc Committee's Objection to Stay Motions (related document(s)3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4002)

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HEARING re Declaration of Cheryl Juaire in Support of the Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #4007)

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HEARING re Opposition of the MSGE Group to the Motions to Stay Pending Appeal (related document(s)3801, 3873, 3890, 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of Multi-State Governmental Entities Group. (ECF #4016)

HEARING re Motion for Stay Pending Appeal filed by Allen J. Underwood on behalf of Certain Canadian Municipality Creditors and Canadian First Nation Creditors (ECF #3873)

Responses Received:

Objection to Motion/ Ad Hoc Committee's Objection to Stay Motions (related document(s)3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4002)

HEARING re Opposition Tribal Group Joinder in Opposition to Stay Motions filed by Peter D'Apice on behalf of Certain Native American Tribes and Others. (ECF #4003)

HEARING re Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)3801, 3873, 3789, 3845) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #4006)

HEARING re Opposition The Ad Hoc Committee of NAS Children's Joinder to Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Harold D. Israel on behalf of Ad Hoc Committee of NAS Babies. (ECF #4009)

HEARING re Opposition Joinder of the Private Insurance Ratepayers to Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)3801, 3873, 3789, 3845) filed by Nicholas F. Kajon on behalf of Eric Hestrup, et al. (ECF #4010)

HEARING re Opposition /Joinder (related document(s)4006) filed by Lauren Guth Barnes on behalf of Blue Cross Blue Shield Association. (ECF #4011)

HEARING re Objection to Motion /The Ad Hoc Group of Individual Victims' (I) Objection to the United States Trustee's and Certain Public Creditors' Motion for Stay Pending Appeal and (II) Joinder in the Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)3873, 3972, 3789, 3845) filed by J. Christopher Shore on behalf of Ad Hoc Group of Individual Victims of Purdue Pharma L.P. (ECF #4012)

HEARING re Memorandum of Law/ Debtors' Memorandum of Law in Opposition to the Motions for Stays of the Confirmation Order and the Advance Order Pending Appeal (related document(s)3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845) filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #4014)

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HEARING re Opposition - Joinder to the Opposition of the Official Committee of Unsecured Creditors to Motions for Stay Pending Appeal (related document(s)4006) filed by Michael Patrick O'Neil on behalf of Ad Hoc Group of Hospitals. (ECF #4017)

HEARING re Reply to Motion Reply in Support of United States Trustee's Motion for a Stay of Confirmation Order and Related Orders Pending Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007 (related document(s)3801, 3972, 3778) filed by Paul Kenan Schwartzberg on behalf of United States Trustee. (ECF #4050)

Related Documents:

Modified Bench Ruling On Confirmation Of Eleventh Amended Joint Chapter 11 Plan Signed on 9/17/2021. (ECF #3786)

HEARING re Findings Of Fact, Conclusions Of Law, And Order Confirming The Twelfth Amended Joint Chapter 11 Plan Of Reorganization Of Purdue Pharma L.P. And Its Affiliated Debtors Signed On 9/17/2021 (related document(s)3726). (ECF #3787)

HEARING re Objection to Motion/ Ad Hoc Conm1ittee's Objection to Stay Motions (related document(s)3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4002)

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HEARING re Motion for Stay Pending Appeal filed by Ellen Isaacs (ECF #3890)

HEARING re Responses Received:
Objection to Motion/ Ad Hoc Committee's Objection to Stay Motions (related document(s)3801, 3873, 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4002)

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P R O C E E D I N G S

THE COURT: Okay, good morning. This is Judge Drain. We're here in In re Purdue Pharma, L.P., et al on the hearing on motions for a stay pending appeal of the Court's confirmation order, as well as the Court's, what I'll refer to as implementation procedures order filed by the United States Trustee, the States of Washington, Connecticut, and California, certain Canadian creditors, Ms. Ellen Isaacs, and Mr. Ronald Bass.

So I believe I've reviewed all of the relevant pleadings on these motions, including the various objections and the replies and the declarations submitted in support of the objections.

I'll also note my order dated November 3, 2021 establishing procedures for this remote hearing, which is being held entirely remotely. For those participating in the hearing as a movant or objectant by Zoom for Government and, otherwise, by telephone.

So I'm happy to proceed with the motions, unless there's been any development on them, which I had encouraged the last time the parties were before me as a way potentially to resolve these motions.

MR. HIGGINS: Your Honor, this is Ben Higgins for the U.S. Trustee. I'm joined today by my colleague, Beth Levine from the U.S. Trustee's Washington office, and she'll

be handling the oral argument for the U.S. Trustee.

We had two housekeeping issues to flag for Your Honor, but we don't have a resolution of the stay motions, to answer Your Honor's question directly.

THE COURT: All right, very well. On the housekeeping, the request to exceed page limits on various pleadings?

MR. HIGGINS: That is the first item, yes, Your Honor.

THE COURT: Okay. And the Debtors made such a motion too. I'll grant both of those motions.

MR. HIGGINS: Thank you, Your Honor.

The second housekeeping issue, as we previewed for Your Honor at the October 14 status conference, we did file a amended memorandum of law at Docket No. 3972 with specific citations to documents.

And we also, as we discussed at the October 14 hearing, we filed two designations at Docket Nos. 3918 and 4043, identifying specific documents that are either in the record and that we're asking the Court to take judicial notice of. We haven't received any objections, but if we did, I know Your Honor raised a couple of questions at the last status conference.

So to the extent I can clarify anything or address any questions, I'm happy to do that, Your Honor.

THE COURT: I think you reduced the list to address my concerns, which were that you were seeking that I take judicial notice of matters that were not appropriate to take judicial notice of, namely press accounts and the like, correct?

MR. HIGGINS: Well, just to be clear, Your Honor, the second designation was actually a supplement to the first designation, so we were still asking you to take judicial notice of what we listed in the first designation. And I can clarify what we're seeking it for, Your Honor, and you can determine if it's appropriate or not. You know, we're happy to live with your decision on that.

THE COURT: Okay. Why don't you do that.

MR. HIGGINS: Sure, Your Honor.

So I believe the items that you raised issues with, we listed some pending legislation, as well as the records of some of congressional hearings concerning the validity of third-party releases.

And we're asking you to take judicial notice merely for the fact that the validity of third-party releases is an issue of public interest and they're publicly available documents, and we're simply asking you to take judicial notice of the fact these materials exist. That's the limit of it and we're willing to live with Your Honor's decision either way, but that's the request, Your Honor.

THE COURT: Okay. Do any of the objectors have a view on this?

MR. KAMINETZKY: Not quite sure about judicial for what purpose he's offering them judicial notice. Your Honor is welcome to notice that.

THE COURT: Okay.

MR. KAMINETZKY: The rest of -- what I saw most of what's been submitted are various pleadings from this case, we don't have a problem with that.

THE COURT: Right, and I have no problem with those pleadings or with pleadings filed in other courts, as long as they're not being -- sought to be admitted for the truth of the pleadings as opposed to just the fact that these are pleadings that have been filed.

MR. HIGGINS: And that's correct.

MR. KAMINETZKY: With respect to newspaper accounts, I'm not sure what the point is. Is it for evidentiary purposes? I'm just struggling to understand what exactly the request of the Court is before we made an objection or not.

MR. HIGGINS: Sure. I'm not sure there are any newspaper accounts, Your Honor.

THE COURT: I don't think there are at this point, and maybe there never were. I thought I saw one that you had submitted, although they were included, I believe, in

the record of the hearing.

I will take judicial notice of the bill and the hearing for the fact that they took place, not for anything as far as the hearing is concerned that any other evidentiary purpose or for which they might be asserted.

MR. HIGGINS: Thank you, Your Honor. Those are the housekeeping issues from the U.S. Trustee's perspective.

THE COURT: Okay, very well.

MR. EDMUNDS: Your Honor, Brian Edmunds for Maryland. I don't -- it may be helpful if I address a threshold issue from our reply first. I think the Court will probably want to hear what everyone has to say anyway.

But logically, the one issue which is the effect of the District Court's decision on the Trustee's and Canadian entities' motion for a stay in that Court limits, I think, what is before the Court today.

Because there's a clear ruling, an unappealed ruling, a ruling, in fact, that the appellees acquiesced from the District Court that holds that there's a likelihood of success on the merits and that the issue raised by the Trustee, which is the issue of equitable mootness, raises when the Debtors or appellees are actually doing something that the balance of hardships would tip decidedly in the Trustee's and the Canadian entities' favor.

And so, there's a finding, and there's a finding

that in the end denies those parties' motion for a stay because the District Court found that there's nothing going on right now. But you found that without prejudice to the states making motions and to the U.S. Trustee coming forward with evidence that something is happening now. So it's without prejudice to that showing or to those showings, and she does not decide the states' motions, which had not been formally brought before her.

But to the extent she rules on that equitable mootness issue and addresses the likelihood of success on the merits is raised in the other parties' motions before that Court, those findings are her decision. And I'm not sure that, you know, there's any -- they could have appealed, but I think that they become law of the case in light of the fact that they haven't.

And they've, in fact, filed a stipulation in the District Court essentially doing -- purporting to comply with the conditions that the District Court placed in its denial of the stay, so that issue, I think, is the threshold matter.

And I understand the Court is likely to hear everybody, but just as a logical matter, it seemed important to raise that first.

THE COURT: I'm looking for my copy --

MR. EDMUNDS: Your Honor, if it's helpful --

THE COURT: I'm looking for that copy of that order. This was an issue that really was, if anything, touched on in a reply, so you've caught me a little bit unprepared on this, Mr. Edmunds, but I want to get out the order.

MR. EDMUNDS: I'm sorry, Your Honor. I mean, we filed our motion before we were in the District Court.

THE COURT: I know.

MR. EDMUNDS: But if you need the opinion --

THE COURT: I'm not faulting you for not raising it when you did then, but I want to make sure I have Judge McMahon's order in front of me, which I am leafing through. Well, here it is. I found it.

MR. EDMUNDS: I think it might be attached to our reply as an exhibit. If it's helpful, Your Honor, I think the relevant language --

THE COURT: No. I'm reading -- let me read it --

MR. EDMUNDS: Okay.

THE COURT: -- as to the points that you're specifically raising.

MR. EDMUNDS: Sure.

THE COURT: Well, again, I've just reread it. And on the two points that you've raised, Mr. Edmunds, that you say would be law of the case, the first one is whether the merits prong has been satisfied. And there, Judge McMahon

says, "In this case, Debtors conceded at oral argument on October 12 the existence of sufficiently serious questions going to the merits to make them a fair ground for litigation."

The other point that you raised, however, as far as the possibility of equitable mootness is in the context of the balance of hardship and not as to a finding as to whether equitable mootness has risen above the level of speculation.

So I think it's a little more -- maybe I didn't hear you clearly enough, but I think it's a little more complicated than you stated. I think that issue of irreparable harm and its relation to equitable mootness and the issue of the balance of the harms and its relation to equitable mootness are not exactly the same issue. And secondly, I think they're both quite context specific as far as the record before the Court.

The case law seems to be uniform that the risk of equitable mootness -- and of course, that's an evaluation that the Court needs to make and that clearly is not law of the case as far as Judge McMahon's order -- standing alone or vel non is not irreparable harm or arguably harm but needs to be taken into account with other factors.

So it seems to me that the record before me is important still on that point.

If the objectors are arguing that the risk of equitable mootness just isn't to be taken into account, I completely agree with you; in fact, I wouldn't need Judge McMahon's ruling because it is to be taken into account. But I don't think it's dispositive on this point, given the different record before her and before me.

So I think the thing we should probably focus on, although I'm happy to hear you more on this, is the effect of the Debtors' concession. I mean, both -- not both -- all parties have spent a considerable amount of time, notwithstanding that concession, arguing the merits of the appeal, both in the motions themselves, which again I repeat, were made before the hearing before Judge McMahon, but also in the replies.

So I was going to suggest to the parties that they spend the vast bulk of their time not addressing the merits, but rather, addressing the other three factors and the bond issues. But why don't I hear from the objectors on the merits point in the first case as to whether their concession should be viewed as a concession for this hearing as well.

MR. EDMUNDS: Sure, Your Honor. Let me just -- you've read it the same way, I think, we have, which is that there is a fact issue on the balance of hardships and that the question of whether, you know, the possibility of

equitable mootness vel non is a, you know, irreparable harm question, is decided by her and that equitable mootness could pose irreparable harm, but the fact issues are still left open as to what's happening now.

So I think -- I'm not saying -- I wasn't saying anything different and I think that we've read it the same way.

THE COURT: Well, maybe with one qualification, Mr. Edmunds. Based on my review of the case law, and I don't think Judge McMahon is saying anything different, the weight to be given to the risk of equitable mootness constitute two ways: first, the way that we clearly agree on, which is the Court needs to evaluate how likely it is that something would become equitably moot; the second is whether -- and this second point is very closely tied to the first point -- I think the more likely it is that something becomes equitably moot, the less important it is to establish something in addition to the risk of mootness.

And nevertheless, I do think that is a second inquiry because I believe all the courts, including the Adelphia court and St. Johnsbury Trucking court have said standing alone, the risk of equitable mootness isn't enough. But what needs to be shown, in addition to that, can be any one of the other factors, it seems to me. It can be the seriousness of the issues on appeal; it can be the issue of

whether a reversal as appear at victory.

You know, there are all sorts of things that can affect that extra something that I think all the courts recognize you need to have in addition to just the risk of equitable mootness. And again, that can be merely the seriousness of the issues on appeal, and also, the courts' assessment of the likelihood of success on appeal. If something really does seem to be maybe not a frivolous appeal, but a real long shot, then the risk of mootness really doesn't seem to be something that courts care about.

So I think I may go back again to the question, which is the -- my recommendation was that we not spend a lot of time on the merits of the appeal, showing of the substantial possibility of success, and really only as it pertains to the other three issues.

So Mr. Kamenetzky's on the screen. I know there are other objectors too, but I'll look to you on that point. You're on mute.

MR. KAMINETZKY: Your Honor, good morning. Benjamin Kaminetzky of Davis Polk for the Debtors.

I could just address the effect of Judge McMahon's order, the kind of contention by Maryland that there's some sort of law of the case or issue preclusion because I think that's just completely inherently wrong. If you want, I can go further, but I just think it's important that we address

that upfront because Mr. Edmunds suggested something that just, it's just completely and utterly false. If I could get two minutes on that.

And then, you know, I assume you'd want them to go first on the other factors. And I agree that spending a lot of time on probability of success on the merits, which is devolved into another oral argument that you've heard for hours now, are so -- on the point, just Mr. Edmunds point. Again, it's just a blatant mischaracterization of Judge McMahon's decision and what happened. So let me just give you some context.

The U.S. Trustee filed an emergency stay motion before the District Court on the evening of Friday, October 8th. After entering a TRO based on the U.S. Trustee's breathless suggestion that something could be happening over the weekend, Judge McMahon heard that motion the very next business day without a single brief from the Debtors or any other party.

We had no opportunity -- the Debtors and the plan proponents had no opportunity to put in any evidence at the hearing. All the District Court had was the brief that the U.S. Trustee filed in connection with its Friday night emergency motion, had no evidence from anyone else, no briefs from anyone else. They didn't even have the confirmation hearing transcripts or anything.

What Judge McMahon focused on at this emergency hearing that was held, you know, that Tuesday, which was the next business day, was -- and the Debtors and the plan proponents didn't present any argument whatsoever on the likelihood of success of the appeal. The focus was solely on whether the movant's evidence might suffer harm in the interim period between that day and today when Your Honor will be hearing the stay motion.

All of that notwithstanding, the District Court denied the U.S. Trustee's stay motion the next business day, as she concluded that the movants had not identified any concrete harm that will arise between now and November 9 when Judge Drain is scheduled to consider the various stay motions. That's on Page 12 of her decision.

Now, the notion --

THE COURT: Okay, so could I just interrupt you? So you're basically saying that your concession that Judge McMahon's decision refers to was really just a concession for purposes of that hearing because you were focusing on the --

MR. KAMINETZKY: It wasn't even that. Judge McMahon misheard. She didn't have the transcript. What Mr. Huebner said is even if we give them all three other factors, they nevertheless lose because there's no harm. There was a hypothetical which he misheard. We corrected

her in a subsequent filing and said, no, we've reviewed the transcript. It was one of these even if they're right that there are substantial issues, there's no harm because nothing would happen between now and November 9, so it was kind of in that context.

And Judge McMahon, as you said, there was a concession, but there actually wasn't; it wasn't in the context of an even if they could prove all three other factors, they certainly can prove imminent harm. And again, we corrected her on the record. We sent a letter identifying and pointing that out in the transcript.

But more important, the law is very clear what collateral estoppel means and it doesn't mean. And, I mean, Second Circuit law here is well developed: Collateral estoppel only applies if the identical issue was decided in the prior proceeding. And none of the issues, Your Honor, none of the issues before the Court today was actually decided by Judge McMahon.

Again, what she was focused on, based on the U.S. Trustee's emergency motion, is do I need to do something now before the November 9 hearing before Judge Drain, and she said no, but that was the entire focus of the hearing. And as Your Honor knows, nothing could possibly have happened because the sentencing needs to happen and the effective date and all that.

So there was absolutely no ruling whatsoever on the balance of harm with respect to an indefinite stay, which the movants are seeking, or even any sort of stay beyond November 9.

There's also -- you know, we talked about that there wasn't a concession. There's also collateral estoppel only applies where there's a full and fair opportunity to litigate the relevant issues in the first proceeding, and I'm quoting from Central Hudson Gas & Electric Company, 56 F.3d 359 at 368. Obviously, when on an emergency motion filed on Friday night when we're imminent on Tuesday morning, was obviously not a full and fair opportunity to litigate. So even if it was the same issue, they still don't get collateral estoppel because the Judge only heard one side; there was no ability to submit evidence.

And finally, Your Honor, it's blackletter law that collateral estoppel only applies where there was a final judgment on the merits. And to say this again, this was a decision on a TRO on a stay motion, not a final judgment on the merits, and it cannot give rise to collateral estoppel.

And, of course, neither the two cases that Maryland cites in its brief has anything remotely to do with the preclusive effect of a decision on emergency stay motion. They both involve prior actions that were litigated to a final judgment on the merits. In the PCH case that

they cite, there was a final and binding decision on the merits and affirmed on appeal that the relationship between parties was a joint venture and the Court found that that was law of the case. And in the other case they cite, the Central Hudson case, there was a trial and a judgment and that's when the Court held that there was a collateral estoppel.

So, I mean, I think it speaks volumes that the actual movants before the District Court didn't even dare make this argument that there's some collateral estoppel effect of Judge McMahon's decision. And I see why now people are -- I mean, it's clear why now, because this is such a, quite frankly, bizarre argument that somehow on a TRO emergency motion that there's some sort of binding decision that's law of the case that prevents Your Honor from making his own determination I think is just completely and utterly wrong.

And I'll stop now because I don't want to, again, step on anyone's toes.

THE COURT: Okay, all right. Well, I think you've addressed the point I really wanted you to address, which is what sort of concession was referred to in that order, and I think I have the context here in any event. I don't believe it was a concession, other than for purposes of that argument and not for purposes of this argument.

Although that being said, it appears to me that the parties should primarily focus on the other three factors for obtaining a stay pending appeal and assume that I've reviewed their arguments with respect to the substantial possibility of success on the merits and still remain fully aware of how I addressed those issues in my decision.

MR. EDMUNDS: Your Honor, may I respond briefly?

THE COURT: Well, I don't think there's -- I think I've already given my view on this, and I don't think there's any other thing to say on it. I mean, I'm not sure there's anything more to be said on it really, unless you say that somehow that they did concede for all time.

MR. EDMUNDS: I don't think it matters whether it's a concession. I think the District Court made a ruling on the issue, and it made a determination as to likelihood of success on the merits and it said that it was not going to allow the appeal to come equitably mooted.

THE COURT: Clearly, the order doesn't say that. It says the Debtors concede, and the only issue is whether they conceded for purposes of that argument or for all time, and I'm satisfied that they did not concede for all time because I can't imagine they would in that context. There's no ruling on the likelihood of the merits, no discussion on the likelihood of the merits here.

MR. EDMUNDS: But I would just say we respectfully disagree, reading the entire opinion that she didn't. But I understand Your Honor's ruling.

THE COURT: Okay.

MR. EDMUNDS: I don't need to say more I guess.

THE COURT: Okay.

MR. EDMUNDS: All right. Thank you, Your Honor.

THE COURT: All right. Okay, so I do have a suggestion for structuring this argument beyond what I've already said, which is I want the parties to focus on what sort of stay they are seeking in terms of duration and activity, and also address it in the light of Bankruptcy Rule 8025.

The parties -- the U.S. Trustee has thrown out different alternatives, which includes a stay that would be ordered by me for a relatively brief period after the District Court's ruling.

It's not clear to me whether the three states have limited their request for a stay in any way or whether they're seeking a stay by me that would go through ultimately a final order, which could conceivably be either denial of certiorari or a ruling by the Supreme Court.

And I think this is important in the context again of Bankruptcy Rule 8025, which is titled, Stay of a District Court -- or BAP, but the focus here's on the District Court

of course -- Judgment, which states in (a): "Unless the District Court orders otherwise, its judgment is stayed for 14 days after entry." And I'll also note in that regard (c) of Rule 8025, which says that if the District Court enters a judgment affirming an order of judgment or a decree of the Bankruptcy Court, a stay of the District Court's judgment automatically stays the Bankruptcy Court's order, judgment, or decree for the duration of the appellate stay.

And then Rule 8025(b) states, is headed for a stay pending appeal to the Court of Appeals and states in (1) in general: "When a party's motion and notice to all other parties to the appeal, the District Court may stay its judgment pending an appeal to the Court of Appeals." In (2), it says, "Time limit. The stay must not exceed 30 days after the judgment is entered, except for cause shown," and then it says, "Stay continued if before a stay expires. The party who obtained the stay appeals to Court of Appeals, the stay continues until final disposition by the Court of Appeals."

And then finally, (d) states: "This rule does not limit the power of the Court of Appeals or any of its judges to do the following, including: a stay; stay proceedings while an appeal is pending; suspending, modifying, restore, vacating, or granting a stay while an appeal is pending; or issue any order appropriate to preserve the status quo or

the effectiveness of any judgment to be entered."

So clearly, appeals from Bankruptcy Court orders should generally and ordinarily be, where there's a motion seeking a stay, that motion should be brought first in the Bankruptcy Court, and courts regularly deny such motions if they are not brought first in the Bankruptcy Court unless there's a legitimate reason to do so. But 8007 pertains to a motion for a stay of a judgment, order, or decree of the Bankruptcy Court pending appeal.

So I have a serious concern that any request for a stay pending appeal beyond the District Court's ruling is not really properly before me or it shouldn't be decided by me -- maybe that's a better way to phrase it -- given Rule 8025.

So let me first ask, is anyone looking for relief beyond a stay up to the time that the District Court rules?

MS. LEVINE: Your Honor, this is Beth Levine for the United States Trustee.

We have asked for relief beyond that. We think, as we argued in our papers, that this Court has the authority, both under Rule 8007 and its inherent authority to control its docket, to stay its own orders, to enter a stay pending a conclusion of the appellate process, so we have asked for that full relief of a stay pending the conclusion of the appellate process or, in the alternative,

pending the District Court's decision. So we have asked for that additional relief.

THE COURT: Right. Although I don't think you addressed Rule 8025 or the case law interpreting it.

MS. LEVINE: Your Honor, I think we addressed the language if 8025, which is different. You know, Rule 8007 does not have the limiting language that refers to the duration of the stay that Rule 8025 does. 8025 refers to the District Court's stay of another court, the Bankruptcy Court's order, which I think is a somewhat different thing than a Bankruptcy Court staying its own order, and that you've got that discretion to stay your own order pending the appeals.

Certainly, you've got the discretion to determine how long that stay should be, but we are asking for that stay for the full duration of the appellate process, with the alternative request for a stay at least until the District Court has made its decision.

THE COURT: Okay.

MS. LEVINE: Your Honor, would you like me to proceed with our motion now or to hear from others on that at this point?

THE COURT: Well, let me just make sure, as far as the three states are concerned, are you looking for a stay through the entire course of any appellate process?

MR. EDMUNDS: Maryland is, Your Honor, and we'd agree with what Ms. Levine just argued.

THE COURT: Okay.

MR. GOLD: Your Honor, Matthew Gold from Kleinberg Kaplan representing State of Washington and Connecticut.

We agree with what Ms. Levine said, our original requests, so that there was no question was for the broader stay. But our alternative position minimum, if you would, is that we have a stay that preserves the status quo and leaves the positions intact so that it can be decided by the District Court or any higher Court when the issue gets put to them.

THE COURT: Okay.

MR. ESKANDARI: Bernie Eskandari on behalf of California, Your Honor. I may have misheard at the beginning of the hearing, you included California with --

THE COURT: No. If I did, it was a mistake.

MR. ESKANDARI: Thank you.

THE COURT: It's just Washington and Connecticut and Maryland. Sorry to give you a heart attack there.

MR. GOLDMAN: Your Honor, if I may add -- Irv Goldman, Pullman & Comley, for the State of Connecticut.

Just to note, Bankruptcy Rule 8007 does embrace motions not only to the Bankruptcy Court but to the District Court, so I would contend it does contemplate a stay pending

appeal through the Circuit. And there's no limiting language in Bankruptcy Rule 8000(a)(1)(A) as to what is meant by pending appeal, so it's open ended. I would just add that point.

THE COURT: Okay. Well, I will note that there are a number of decisions that rule otherwise, including In re Russo, 2017 B.R. Lexis 544 at 5-6 (Bankr. C.D. Cal, Feb. 27, 2017), In re VCR I, LLC 2019 B.R. Lexis 3376 at 27 (Bankr. S.D. Miss., Oct. 28, 2019), and In re Schupbach Investments, LLC 2016 B.R. Lexis 836 at 5-6 (Bankr. D. Kans., March 17, 2016), In re Howell-Robinson, 2008 WL 5076975 at 2 (Bankr. D.D.C. July 30, 2008), and Culwell v. Texas Equipment Co. (In re Texas Equipment Co.) 283 B.R. 222, 230-31 (Bankr. N.D. Texas 2002).

I will note that Judge Roman in this District left the issue open in Credit One Bank, N.A. v. Anderson (In re Anderson) 560 B.R. 84, 88 (S.D.N.Y. 2016). Although rather than the Bankruptcy Court decide the motion, which was made to him, in the alternative under either 8007 or 8025, he decided the motion himself under 8025 after his ruling and denied the motion on the merits for a stay.

But I think it's important, and I believe it's consistent actually with Judge McMahon's approach, for the parties to focus on the two alternative forms of stay that the parties are seeking here: their preferred one, which is

through the entire appellate process, and alternatively, through the District Court's ruling.

Because the determination of the issues and, in particular, the three factors other than on the merits, to my mind, could be quite different depending on whether it's a stay through the District Court's ruling or a stay through either denial of cert or a ruling by the Supreme Court, which obviously would take a significantly longer amount of time.

And on the merits issue, obviously a trial judge that is faced with a request for a stay pending appeal is always in the awkward position of evaluating the merits of the trial judge's own opinion -- that isn't a problem for the District Judge -- and makes that review, I think, much more, in some ways at least, if on a psychological basis, more meaningful.

So I really do want the parties to focus on those two different durations for a stay, and so, you should address your arguments accordingly.

So I don't know if you decided who was going to go first, whether it's Ms. Levine or counsel for one of the three states, but one of you should go ahead.

MS. LEVINE: Your Honor, I'm ready to proceed. Thank you. This is Beth Levine again with the Department of Justice for the United States Trustee.

I'll save my introductory remarks. You know why we're here. I will skip over much on the likelihood of success on your direction.

I wanted to say one thing, which is that Judge McMahon in Footnote 4 on Page 10 of her decision, you know, said that she considered it obvious that there are serious questions going to the merits and making the fair ground for litigation. We think that is true.

You know, certainly, we don't expect you to agree that you've erred. We know you disagree with our legal position. But we think there are very serious questions and that they merit appellate review and that the denial of that appellate review, if there were a dismissal based on equitable mootness, would be irreparable harm.

And it's not just the denial of appellate review vel non itself; it's because you have claims here that are being eliminated without consent that would be permanently irreparably gone without that appellate review.

THE COURT: Well, can we focus on that for a second? First, you went -- and I'm responsible for this since I told the parties not to focus substantially on the merits -- you went very quickly from that to the issue of irreparable harm.

And I just -- I want to be upfront with everyone. It seems to me that there are, in fact, issues going to the

merits that are somewhere between, you know, a mere possibility of success and a probability of success. I think many of the issues raised by the U.S. Trustee and the three states do not fall into that category; that, in fact, they are unlikely to prevail on appeal. Those go to the 524(e) point, the due process point, and their assessment of the merits of the settlement.

But I agree that the issue of a release of third-party claims is, in every instance, a serious issue that requires a Court to sift through complicated legal and factual considerations. And the limits, in particular, on what types of claims that would belong to a third party, i.e., not the Debtors' estate, that can be appropriately, legally enjoined requires serious parsing of the case law and is certainly something that even the Second Circuit case law recognizes as an issue where the lower court can get it wrong, as was the case in Metromedia and Carter and other decisions which recognize the underlying principle that the Court has power to enjoin third-party claims. But drawing the line as to what claims can be enjoined and what can't is something that courts can well disagree on.

So on that point -- unlike on the due process, the jurisdictional points, the 524 point, frankly, even the state sovereignty point, all of which I think are unlikely to prevail on appeal -- this issue as to how released claims

are to be cabined is, I believe, one that does satisfy the requirement to show a strong showing of likelihood to succeed on the merits, such that there's a fair ground for litigation.

Although again, as recognized, for example, by Judge Chapman in In re Sabine Oil & Gas Corp., 551 B.R. 132, 143 (Bankr. S.D.N.Y. 2016), the focus on the degree of likelihood of success is tempered by the balance of the harms or the Court's assessment of the balance of the harms.

So I suppose the objectors can try to persuade me to the contrary, but I think that I want to turn then to the irreparable harm point that you were starting to make. And the argument you made is that the people and governmental entities that objected to the release or injunction would lose their rights if a stay was not granted.

And again, this goes to my direction to you all to focus on the two different times for the stay. I confess I'm having a hard time seeing how that would be the case if the stay were granted or not granted either way through the date of the District Court's ruling with the additional 14 days that are added on under Rule 8025.

And further, I'm having a hard time, although maybe not as hard, with the argument that equitable mootness really would occur here if a stay were not granted through the date of the entire appellate process. I guess that

depends, in some measure, upon whether the plan is substantially consummated.

But as far as the release is concerned, the majority of the payments by the released parties, as you yourself point out, occurs substantially down the road, and under the plan, they have a credit only for what they've paid in the interim.

So it seems to me under either scenario too broad to say that these people who the U.S. Trustee says that he's speaking on behalf of would lose their rights. They would only lose it if there's equitable mootness, right?

MS. LEVINE: Your Honor, that is the primary concern, that is if there is equitable mootness and there's not a review on the merits, they would lose their rights that would otherwise --

THE COURT: Well, there's no other concern, right? I mean, it's just based on equitable mootness, nothing else.

MS. LEVINE: Your Honor, I think there's also a concern about what's going to happen in the interim is, you know, defendants' move to dismiss based on these releases, for example. As noted in our brief and one of the cases that's pending, one of the defense had suggested that the releases apply. This was prior to the Court's decision, so it was a different context. But we don't know how that would play out and whether cases would be dismissed with

prejudice in the intervening time, so I think there is that risk. But our primary concern is the equitable mootness risk that would make it irreparable if there's no longer a possibility of review on the merits.

THE COURT: So there are -- but that wouldn't really happen until the effective date of the plan, right?

MS. LEVINE: Your Honor, it's my understanding that the releases become effective on the effective date.

THE COURT: Right.

MS. LEVINE: So what we want to avoid happening -- but if the appeals dismissed without a review on the merits, that effective date is going to come and go, and the Debtors have --

THE COURT: But I'm asking you to focus on that if and how likely that's to happen.

MS. LEVINE: Yes, Your Honor. So focusing first on the timing of the District Court's decision, Your Honor. Under the plan -- well, first of all, they've argued that it's not just the effective date that may cause equitable mootness. They have very specifically preserved their rights to argue that the criminal sentencing, which will happen before the effective date, can be a basis for equitable mootness.

THE COURT: What do we think about that? I mean, that's under a separate plea agreement; that's not under the

plan.

MS. LEVINE: Your Honor, it obviously raises a concern because they've indicated they're going to argue it. But our concern is also, you know, they've said nothing else that's happening before the effective date can constitute equitable mootness, and we've got two concerns about that, Your Honor. One is, as we've stated, you know, their stipulation about that doesn't bind the Second Circuit, it doesn't bind other parties.

We've had other parties that haven't signed the stipulation that have filed oppositions to motions to stay. We've asked multiple times what's happening. We haven't gotten a response. So we don't know what's going on that someone else might look to and say, you know, is the basis of an equitable mootness argument.

But the other thing we're concerned about, Your Honor, is --

THE COURT: But how could any of those things -- I'm sorry to interrupt you. But how could any of those things be substantial consummation?

MS. LEVINE: Your Honor, I don't think there'll be substantial consummation, but under Second Circuit law, the test is a substantial or comprehensive change in circumstances. And, you know, clearly, the Debtors think that something can happen before substantial consummation

that would support equitable mootness because they said they might argue that based on sentencing.

And the concern, Your Honor, is it may be that, you know, they have said they've structured this so that they have time between the confirmation and the sentencing to get certain things done, that they want to get certain things done before they are sentenced. We don't have clarity on what those things are.

But we don't know, you know, what pre-effective date activity is going to open the door to sentencing or pre-effective date activity they're going to say is well, you know, say it's transferring assets to NewCo. Transferring assets to NewCo on its own, they might say, well, that can be undone. But then after we get past sentencing, we don't know what their argument is. Is it going to be that well, now that it's been sentenced, that asset transfer can't be undone?

So we don't really know how these things interplay together, which makes us very concerned about when, you know, not just the effective date, but also the sentencing. And also what else is happening and how those things work together so that if we get past sentencing, they're going to come back and say, oh, well, you know, this other pre-effective date activity on its own could be reversed, but now it can be undone. Now that bell cannot be unrung.

And so, for all these reasons, we have concerns about these other activities.

THE COURT: But look, the presumption of equitable mootness, which is when their five-step case in the Second Circuit case law comes into effect, is where the plan has been substantially consummated. Generally, courts focus on the distributions under the plan as that, or transfers to be made under the plan that cannot be unwound.

So far, I'm just hearing sort of vague fears, as opposed to anything that actually would give rise to any real risk at all of equitable mootness.

MS. LEVINE: Your Honor, we think it's a substantial risk because of what the Debtors have said regarding the impact of sentencing, but we also think that the dates here --

THE COURT: Let me -- I mean, Judge Kaplan dealt with this head on in the St. Johnsbury case. He says to begin with, the government's failure to concede that its appeal would be moot absent a stay does not help those opposing the motion any more than the opponents' failure to concede that the appeal would not be so moot it harms them.

Mootness is a doctrine grounded in constitutional considerations designed to limit courts to the resolution of actual controversies, although I think the case law has moved on since then and the focus is really, for equitable

mootness purposes, on the finality of bankruptcy plans.

And then he says the parties through additional proceeding, therefore, cannot determine even by agreement whether a case is moot; that is for the Court.

But again, we're talking about equitable mootness. I don't think there's any argument that there would be constitutional mootness here, absent probably well after the effective date. But as far as equitable mootness is concerned, I'm just not seeing it.

I mean, again, the case law in the Second Circuit focuses on the five-step test where a plan has been substantially consummated. Other circuits focus on simply whether third parties' expectations, i.e., parties who are not parties to the appeal or on either side of the contested issues, would be so harmed that the Court would not exercise what it otherwise has, which is an unflagging duty to exercise its jurisdiction. And I just... I mean, how would you undermine the plan my invoking equitable mootness for things that were done before substantial consummation? It just seems like a contradiction in terms.

MS. LEVINE: Your Honor, as I think the St. Johnsbury case pointed out, we're in a difficult position. We don't want to argue against ourselves. We don’t think equipment mootness would or should apply --

THE COURT: No, you don’t have to --

MS. LEVINE: -- but the Debtors --

THE COURT: I'm not asking you to argue against yourselves. But I just don't... But I think here you need to show me that this harm is not just conjectural.

MS. LEVINE: Your Honor, the reason we think it's more conjectural is based on what the Debtors have said regarding what they're going to argue about equitable mootness, and they've pinned it, not just to the effective date, but to the sentencing date, which under the plan could be as early as November 1st, which is the day after our argument in the District Court, with the effective date really soon after that, as early as December 8th, a week later.

So, you know, talking about the timing and the proposals that they have offered, you know, we think certainly we should at the very least get a stay until the District Court's decision to make sure those dates don't come and go before the District Court has a chance to rule. We are going at --

THE COURT: Let me focus on that point. If it is clear that the District Court is going to rule before substantial consummation of the plan, before the effective date, why is a stay needed? Why should the Debtors and the other parties who are in support of the plan be precluded from laying the groundwork in case the conditions to the

effective date do occur, such as setting up new boards, setting up the trusts, et cetera?

I raised this point, you know, the first time that a stay was asked on an emergency basis, and I'm still having a hard time seeing how that works. And frankly, if one looks at Judge McMahon's order, which I'm not doing, but it's as much in support for that view also, that there really doesn't seem to be anything that's really going to really run the risk of equitable mootness until after the effective date, which it appears, at least, would occur after Judge McMahon's ruling.

Now, I think you acknowledged that the stay you're seeking would have to be a stay of everything, but could just be a stay of the effective date, right? Or at least it doesn't have to be a stay of everything? I don't want to put words in your mouth. You didn't agree with this to the other point. You didn't agree that it could just be a stay of the effective date. But I think you did agree that the stay of the confirmation order would not have to be a stay of all of the order in order for there to be no risk of equitable mootness, right?

MS. LEVINE: Your Honor, in our motion we talked about one specific thing, because one of the opponents had raised a concern about secreting assets. And you know, we tried to have this conversation with the Debtors just to

find out what are the specific things that you would want exempted from a stay. And we didn't get an answer to that question.

So if there was a question of other specific things, those are things we would have to take under consideration or have authority to agree to any other specific thing than what we put in our brief.

But you know, we understand that Judge McMahon is moving very, very quickly. We're all moving as quickly as we can to get the appeal decided quickly. But there's no guarantee that she is going to decide before a date certain, particularly when these states are approaching in December.

THE COURT: So that would argue just for staying the effective date until after her ruling, not staying everything else that the Debtor would be doing to prepare for the effective date, which isn't really --

MS. LEVINE: Well, Your Honor --

THE COURT: -- which isn't really under the confirmation order anyway, because the confirmation order doesn't really contemplate any material transactions before the effective date, I think. Right? None have been identified.

MS. LEVINE: Your Honor, the way to stay the effective date is to stay the confirmation order, because those are the transactions that lead up to getting to the

effective date and --

THE COURT: Let me ask --

MS. LEVINE: -- lead up to getting to the sentencing.

THE COURT: Let me ask you the question different. What transactions out of the ordinary course do you believe they confirmation order authorizes now before the effective date?

MS. LEVINE: Your Honor, the confirmation order grants a broad authorization to engage in the transactions that they need to implement the plan. And part of the problem is we're in the dark on exactly what they're doing. We want to maintain the status quo because equitable mootness is an existential threat to our appeal. And maintaining the status quo is the only way to protect against that risk of equitable mootness. You know, it's --

THE COURT: Do you have any case that stands for that proposition?

MS. LEVINE: I'm sorry, which --

THE COURT: That any risk --

MS. LEVINE: -- that equitable mootness is --

THE COURT: -- any risk of equitable mootness is enough? In fact, most of the cases say just the opposite of that. It has to be a real risk, coupled with other things, or at least something else. Now, maybe that something else

here may simply be the significance of ruling on the merits of the appeal.

But it would still seem to me that if you had -- and this is repeated in numerous rulings -- there's one by Judge Briccetti in U.S. Bank National Association v. Windstream Holdings, Inc., 2020 U.S. District LEXIS 137183. Merely invoking equitable mootness as the Appellants have done here -- a risk that is present in any post-confirmation appeal of a Chapter 11 plan -- is not sufficient to demonstrate irreparable harm. If the Court were to credit this kind of argument for every such request, it would be forced to review nearly every bankruptcy appeal on an expedited basis and, of course, grant the motion if some other factor were established. And he cites there In Re Calpine Corp., 2008 Bankr. LEXIS 217 (Bankr. S.D.N.Y. Jan. 24, 2008).

But there are lots of courts that say that. That you can't just say there's a risk of equitable mootness and then get a stay pending appeal. You have to actually focus on what that risk is and how real it is, and then see how it's tied into the other factors.

And I'm still not seeing it as far as between now and a date within a reasonable time after Judge McMahon's ruling, which I think the drafters of the rule have said is at a minimum 14 days. And that would be just a stay of the

effective date. I mean, there's no discussion about how this plan could be substantially consummated before then.

And even then, there's the issue of who are the people who are harmed by a continued appeal? And if we're focusing just on the Sacklers, I don't think that's the type of harm for the shareholder released parties; that's the type of harm that the courts recognize is a basis for equitable mootness, because they're in the heart of the issues that are on appeal. There would have to be other third parties, legitimate parties who aren't in the dispute who were being harmed.

MS. LEVINE: Your Honor, you know, this sort of goes back a little bit to where I started, where we think the harm is the complete elimination of claims that becomes unreviewable if the appeals are equitably moot.

THE COURT: All right. I think we've covered --

MS. LEVINE: And --

THE COURT: -- this point, because again, I don't think you really answered my question on how it becomes unreviewable. I just don't -- I don't see it here. I don't think you carried your burden of proof on that point, at least through the date of Judge McMahon's ruling and the rule stay that goes into effect. And then parties can ask her if she thinks there's a basis for a further stay in the Second Circuit. And they will have had the benefit of

looking at the issue besides equitable mootness that you're focusing on, which is the importance of the merits, and can weigh those themselves.

I just -- I don't -- the release isn't going to be effective until the effective date. So to lose the release doesn't happen until the effective date.

MS. LEVINE: And Your Honor, we think it's -- we're asking for a stay, you know, and in the alternative, at least a stay through the District Court's decision, to make sure those dates don't pass, to make sure that we can this appeal heard on the merits. We think that's critically important. We think it raises really important issues that should be heard on the merits.

THE COURT: All right. Well, again, I can understand that argument as far as a stay of the effective date. I'm still not seeing it as far as a stay of other actions, which would not be -- I don't believe -- authorized before the effective date. And I've already ruled, and I continue to believe, that the advance order is clearly not a basis for equitable mootness. I mean, it's just -- that would be -- for a doctrine which is already under legitimate attack, to rule that that order is a basis for equitable mootness is just -- I can't imagine it. I mean, I think that's a frivolous argument. I really can't -- it's just inconceivable.

MS. LEVINE: Your Honor, I appreciate your views on that. You know, it's our concern that Second Circuit's not bound, and our hands are tied a little bit because we're in the dark about what the Debtors are actually doing. We have asked them --

THE COURT: All right. Well, I'll --

MS. LEVINE: -- multiple times.

THE COURT: -- ask the Debtors.

MS. LEVINE: We haven't gotten an answer.

THE COURT: I'll ask the Debtors what they believe they're authorized to do before the effective date to lead to the argument that the plan is substantially consummated and, therefore, it would be inequitable for third parties, not the parties who have the benefit of the release, that you are appealing, in essence. That's the harm you're trying to address is your dispute over the legitimacy of the third-party release. And I think I do have a -- just because I... Look, the cases are reported for a reason. The lower courts follow them.

So, you know, one reads Charter, one reads Windstream, one reads the Chateaugay case, and Metromedia. I mean, these are MPM Silicones. These are published opinions by the Second Circuit where they lay out when something will be found to be equitably moot. And it is an equitable doctrine, and so the facts matter.

But, you know, I think actually the trial courts have been given the job generally to find the facts in light of the case law, and I just can't imagine that the facts before me, up at least until the effective date, would lead the Second Circuit to find that the appeal was rendered equitably moot.

It's just -- there's no effective date, there's no substantial consummation, there's no sale that's happening before the effective date, there's no other transaction. And it just -- it doesn't fit even within the actually fairly pro-equitable mootness case law in the circuit, which focuses on the heavy showing someone has to make against equitable mootness when a plan has been substantially consummated. This plan isn't even effective, so it's hard to believe that it could be substantially consummated.

Anyway, so why don't we move on to the balance of hardships and public policy.

MS. LEVINE: Your Honor, so on the balance of hardships, the opposing parties have rested primarily upon a harm from delay. No one questions the importance of providing relief to those who have suffered from the opioid crisis. In our view, that supports a stay. Those who oppose the plan have also suffered from the opioid crisis. They have equally pressing interests and abatement and compensation, but they would have their claims eliminated

entirely by the plan, not just delayed.

And we don't agree that a stay would cause significant delay in the context of this case, which has been pending for over two years, with litigation against Purdue and the Sackler Family that began before that, where the appeal is being expedited at a very rapid pace before the District Court. The argument on that appeal is in just three weeks. And, of course, if it went to the Second Circuit, we would seek to expedite it there as well.

The United States Trustee is the watchdog, the congressionally appointed watchdog, acting in the public interest to try and make sure bankruptcy is not abused. We're advocating -- we understand you disagree -- but to ensure that the plan does not transgress the Constitution or the Code, and we think there's a public interest in having these issues heard on the merits regarding these third-party releases, and having, you know, the appellate courts provide more clarity on the limits of when they're allowed and when they're not allowed.

The Debtors and their allies have relied a lot on the creditors' support for the plan suggests that a stay would be against the public interest. The creditors' support for the plan is not the same thing as the public interest. It just reflects the interest of the creditors that voted in favor of the plan.

There is a significant public interest in vindicating the rights of the minority and preventing the will of the majority from going unchecked by appellate review. And we think that permanent elimination of the claims against the consent of the people who did not want to release these claims outweighs that marginal delay, which, again, we think -- particularly focusing in on the District Court decision -- is relatively minimal.

THE COURT: Well, let's not focus on the District Court decision for the moment. Let's focus on when you believe that -- when do you believe that a final decision here would be made? And I'm assuming that's through the Supreme Court process.

MS. LEVINE: Yes. If this were to go -- if someone were to petition for certiorari, it would be to the Supreme Court for process, and of course, if the Supreme Court granted cert, that would certainly reflect that these are significant issues that were review.

THE COURT: So have you projected how long that would take, that process? Are we talking 2024?

MS. LEVINE: Your Honor, I don't know the answer to that.

THE COURT: Isn't that important to figure out?

MS. LEVINE: I don't know that there's any way to predict with any kind of certainty how quickly the courts

will go, other than we've committed to expediting these appeals. And you know, that's shown through our actions with how quickly we are moving in the District Court.

THE COURT: Well, does that apply to the Supreme Court, though? They don't take expedited appeals like this, do they?

MS. LEVINE: Yeah, I don't know exactly what the process is, Your Honor, but I don't think that the expediting works in the same way in the Supreme Court. So I don't have an answer for how long that would be. But, Your Honor, we do think that these issues are important and that, you know, a delay from the stay is outweighed by the elimination of these rights. And that that would be an irreparable injury for these claims to be eliminated entirely, without a full review on the merits.

THE COURT: And as far as the individuals' rights are concerned, you assert them -- that they would be asserted by individual under state consumer protection laws?

MS. LEVINE: Some of this -- well, some of the individual claims are under state consumer protection laws, Your Honor. Some are under common law. I'm not sure I quite caught your question.

THE COURT: I'm just trying to figure out what the claims that you're looking to protect are, as far as individuals' claims.

MS. LEVINE: Direct claims, based on the individual non-debtor conduct for their own misconduct, breaching a duty directly to the Plaintiffs, such as the cases that -- the complaints that we cited in our brief, which allege claims under state consumer protection statutes, common law fraud, negligence, RICO. There's a number of claims that have been asserted along those lines that allege direct participation and direct liability, based on the individual Defendants' own misconduct.

THE COURT: Okay. And that misconduct would be misconduct in being an officer or director or shareholder of the Debtors?

MS. LEVINE: In the cases that we've cited, yes. I believe the individual defendants were in those roles. But the allegations are that they'd reached -- is not just a sort of veiled piercing, breach of fiduciary duty, imputation of the company's conduct, but that the individuals had breached their own duty and engaged in their own misconduct, making them directly liable to the Plaintiffs.

THE COURT: Have you found any of those cases or any evidence from the confirmation hearing that shows that those allegations don't substantially or entirely overlap with the showing that would be necessary for piercing the corporate veil or other causes of action that the Debtors

would have?

MS. LEVINE: Your Honor, the factual allegations may overlap, but I mean, I think this gets to where we disagree with what the proper scope of the non-debtor releases are, and that is something that we think should -- is an important issue that should be reviewed, and one of the reasons why we're seeking a stay pending appeal.

You know, when Metromedia talked about the cases that have -- the rare cases that have allowed these releases, they were in circumstances that were more limited. They were in class actions, like Drexel, which is this is not -- are aware they were, you know, more surely derivative claims, such as fraudulent -- you know, claims that were duplicate fraudulent transfer claims, like in Madoff or Tronox or in Manville I, where it was directly against the asset of the estate, and that in the claim was a secondary insured that was derivative of the primary insureds' claim, the debtor was the primary insured.

So we think that question of whether overlapping factual allegations is enough to put this within the scope of a non-debtor release and whether that's the appropriate scope is an important question, as a question that should be addressed on appellate review.

THE COURT: Well, no, I've already said I believe that's correct. I'm just trying to figure out here -- and

this is in a different context; this is balancing the harms -- the right of someone to pursue, which on the facts are duplicate claims or overlapping claims, is so strong, particularly when they would receive a recovery, at least which was found under the plan, they wouldn't receive at all without the settlement, is enough to override the harm caused by the delay.

MS. LEVINE: Your Honor, we think there is harm here. The claims directly against the Sacklers or other non-debtors were never valued. And there's a harm to having the choice of whether to settle --

THE COURT: I actually did value them.

MS. LEVINE: -- or proofs of that claim are not --

THE COURT: I don't know why --

MS. LEVINE: -- taken away from you.

THE COURT: I don't know why you say that. I actually did value them in the aggregate. And I considered those complaints. And I said, given the battle of the century that would ensue, the settlement was fair. The U.S. Trustee took no discovery on those issues and didn't make any case on them. Some of the objecting states did, and I'm sure Judge McMahon will read carefully the witness testimony on those points.

But I have to say, I am having a hard time seeing how those claims, which really are overlapping claims as far

as I can tell -- and I did the best I could to cabin the release to make it clear that they would not expand beyond that -- that the people that you're looking out for would get any recovery whatsoever in the context where the settlement was not in place and there would be a litigation free-for-all.

Again, you have the United States getting it superpriority claim. You have individual states litigating their claims. And then that's up against a class action lawyer or two or three, back in the MDL, where there already was, by the substantial private side in the MDL, a settlement for a lesser amount, namely $3 billion.

So I'm just having a hard time seeing, other than the intellectual desire to clarify this issue one way or the other, how the people who would object to the release of their claims are harmed more than the people who would be receiving the benefit of the plan distributions.

MS. LEVINE: Your Honor, I think we have a disagreement about what the evidence shows about that. But there's also a harm from having that choice taken away, and what we view of a violation of due process rights to be forced into a settlement that one does not agree to.

THE COURT: Well, the parties you're speaking on behalf of certainly had notice of the confirmation hearing and the right to hire a lawyer to make that very argument,

which is a lot easier to make than hiring a lawyer to compete against 48 states and the Debtors and the lawyers and their clients who make up the Ad Hoc Committee of Personal Injury Claimants.

If they're not prepared even to hire a lawyer to fight the plan, how do you assume that they're going to even undertake the litigation that you want to preserve for them?

MS. LEVINE: Your Honor, the premise that there was adequate notice, again, you know, we disagree with. That's part of our objection. And we know you disagree. And this is part of the reason why we think this needs appellate review.

And you know, there are parties who have filed claims that would be precluded. We think we've shown that. There are numerous cases listed in the preliminary injunction.

THE COURT: But they haven't objected to the plan. And you're not going to represent --

MS. LEVINE: Mr. Hartman has.

THE COURT: You're not going to represent them in the litigation, right?

MS. LEVINE: No, Your Honor. And of course, the United States Trustee is here not representing individuals, but representing the public interest in making sure that the bankruptcy system isn't abused. But we think, you know, you

can still look to that harm, the due process harm to people who are having claims eliminated, and to the public interest in having these significant important issues addressed on appeal as part of your harms balancing in addressing a stay pending appeal.

THE COURT: Okay.

MS. LEVINE: Your Honor, I don't know if you have further questions. You know, we've made our case in our briefs. Obviously, we have some disagreements, but we would stand on a request for a stay pending appeal. And I will, if you have no further questions, cede the floor to some of the other movants.

THE COURT: Okay.

MR. GOLD: Good morning, Your Honor. Matthew Gold, from Kleinberg Kaplan, representing the State of Washington. Can you hear me?

THE COURT: Yes.

MR. GOLD: May I proceed?

THE COURT: And see you too. Yes. You can go ahead.

MR. GOLD: Thank you, Your Honor. First, I just would like to touch on -- because I think it's an important point in context of the questions that Your Honor has raised -- the attempts that were made to try to resolve this matter prior to this hearing.

I think the key point, which Your Honor said in framing the question for us, was that it would be my wish that the schedule for the appeal is a reasonable one and does not run the risk of causing Norma's harm to creditors. I'm not going to quote every word you said, but the key point was, with a second potential look at the Appellate Court as to whether any further stay is necessary.

And I think that that is the point here where, with what we -- what I described earlier as our fallback position, that we are seeking to have a stay consistent with Rule 8025 that would at least take the process through a decision from the District Court, and then give a period of time for a higher court to decide whether to further extend the stay. The --

THE COURT: Can I represent you on that point, Mr. Gold?

MR. GOLD: Sure.

THE COURT: When talking to the U.S. Trustee's counsel, I made a distinction between a stay of the effective date, or the occurrence of the effective date under the order, which would be a specific condition to the effective date in the order and in the plan, and a stay of the order in its entirety. And it seemed to me that the latter might be warranted, but not the former. I mean --

MR. GOLD: Well --

THE COURT: -- the other way around. That the latter would not be warranted, but the former might be.

MR. GOLD: I think that a proper consideration of that question, Your Honor, requires a consideration of the effect of sentencing. And that is the -- and that is something that may not -- that is clearly contemplated under the confirmation order, although it may not be completely clear how it -- whether it arises under the plan or under a separate stipulation.

But the connection, Your Honor -- and I think the Debtor has been very clear about this -- is that they are going to press that once sentencing has occurred, they will be suffering immense harms if they are not permitted to then consummate the plan and to enter into the transactions under the plan. And so that, therefore, to enable there to be a meaningful stay of the consummation of the plan, as Your Honor has posited, there needs to be a delay of the sentencing as well.

If the Debtors can posit -- now, right now I'm positing what their argument is going to be, and I realize that that's a somewhat shaky limb to be on, but that's pretty much where I understand their position is going to be, so that to prevent the possibility of a shipwreck or major harms occurring if there is sentencing and not a -- and they can't consummate the plan, we need to have a delay

in the sentencing.

If the sentencing is delayed and concurrent with that a stay of the effective date of the plan, we believe then Your Honor's analysis is correct, that that should be sufficient to maintain the status quo and prevent there being a substantial consummation that would be the predicate for an equitable mootness argument.

Now, even there, we're at a slight disadvantage because, as the U.S. Trustee has said, we don't know exactly what the Debtors would be doing and it would be a lot cleaner for us to accept this, if the Debtors would straightforwardly say, we agree with you; nothing else that is happening here would create a predicate for equitable mootness, along the lines of the assurances they gave to the parties in connection with the advance order, so that we would have a basis of knowing that there wasn't something going on that we're not aware of and that in our saying we don't think there's a problem, someone plays a gotcha game and says, yes, they weren't aware of this and that happened.

But based on our assessment, what we're aware of being contemplated, that's the one critical point that we have to add. There has to be a delay in sentencing and then a delay in the effective date of the plan, which would happen together because the effective date of the plan can't occur without sentencing in the first instance.

And so the reason we were unable to reach any kind of resolution with the Debtors in trying to resolve this short of having this lengthy hearing today was that they insisted that any resolution we reached with them had to include a date certain for the sentencing to occur.

And so that's why we've been unable to reach an assessment with them, because they kept including the sentencing, reserving their right to argue that the occurrence of the sentencing would create an equitable mootness problem, either by itself or because of what would be entailed afterwards. They didn't get to that level of specificity. But that's why we tie those two things together.

THE COURT: Okay. And I appreciate that I may be asking you to say things that are contrary to your later argument that sentencing wouldn't render the plan moot. And all I can say is that you wouldn't be held to those things in the future, and I'm sure the Debtors have thought of them to.

So I'm having a hard time seeing how the sentencing could create equitable mootness. I mean, it's part of a plea agreement. It's scheduled in front of a different judge. I guess I could enjoin --

MR. GOLD: Oh --

THE COURT: -- the Debtors from seeking it. But

the agreement has this provision that they're supposed to go get sentenced.

MR. GOLD: Well, Your Honor, as I understand it -- and again, this will be something that the Debtors are saying this is argument that they're going to make.

THE COURT: Right.

MR. GOLD: And if they say before the Court now that they would not make this argument, that might be a lot cleaner. But as I understand it, their position is going to be that once sentencing occurs, they are no longer able to operate as the companies that are currently constituted. That because they will be sentenced, they will be unable to sell product, to receive Medicare, or contributions and other things. And that therefore, they will be threatened with an immediate shutdown, a corporate catastrophe, unless they are able to go ahead with the restructurings that are contemplated under the plan, and so then that's why those two will be tied together.

Now, I should say that, Your Honor, we would love nothing more than to engage with the Debtors and to say is there a way to allow this to go forward, to allow some corporate restructuring to take place, to allow some payments to go to the victims of Purdue and the Sacklers that are supposed to be receiving payments under the plan.

We're not trying to -- that's not our goal, to

prevent those types of assistance from happening. And if there is a way for the parties to on one hand permit some of these things to go forward, while on the other hand preserving the right of appeal, we are very -- we have always been open to having that discussion of trying to make propositions along those lines to the parties. Or perhaps something along the lines of the emergency relief fund that was proposed during the case, but that did not occur. Something like that that could perhaps take place to allow parties to get relief.

What we perceive is that the parties who have refused to engage with us on this point are doing so because they want to be able to hold up the possibility of relief as their ticket to getting an equitable mootness that would preclude further appeals.

So if there is a way of managing to separate these things through stipulation, or an order, or something that allows some of these things to occur -- and I think Your Honor is right that perhaps they are not at all necessarily as abstract principles linked, but we believe that -- our understanding is that the way this plan has been drafted and that this plan has been put together -- and this is a plan that has been drafted and put together with a clear strategy of preserving it through equitable mootness -- that the effort has been made to tie these things together so that

they could not be disentangled, and so that starting down this road would necessarily create the predicates for equitable mootness. And that starts with the sentencing and then pulls in the restructuring and then the other matters that occur there.

I will just note then with respect to the timing, the plea agreement took place, I'm going to say, in October or so of 2020, and was held in abeyance for a period of time to allow further proceedings before this Court, confirmation and other such things. The Debtors then, for reasons that are at least opaque to us, put in a further delay for them to do certain preparations prior to the sentencing occurring.

So it's pretty clear to us that the sentencing, which we are not asking to be undone but can be held in abeyance while the issues under the plan receive proper appellate review, and so holding those matters off, the Debtor has managed to stay in this presentencing period for over a year now and contemplated further staying.

So we believe that the most effective and simplest way to preserve the status quo is to have, as Your Honor said, a stay that includes the effective date plus the sentencing to avoid the shipwreck scenario. Or in the alternative, we're perfectly -- we are desirous of trying to come up with a better way to allow some benefits to go

through, if it will not -- if the parties can agree that doing that will not equitably moot an appeal.

But so far, we have not received serious engagements on that. And apparently, the parties prefer to try to use the very real need of these victims to receive money as a kind of hostage situation where they can't get their money unless our appeals are irrevocably denied through (indiscernible) risk.

THE COURT: Okay.

MR. GOLD: I will not -- I will move on, then, Your Honor. I will not touch on the merits particularly, because as I think Your Honor said, we agree that the standard is sufficiently flexible, that we've made enough of a showing with the merits of the appeals that we wish to put forward, to satisfy the test in the Second Circuit. And we concede that we have to meet several factors of the prongs, and it's not simply enough to have succeeded on one of them. But we believe that we've made a sufficient showing on those to move on to the other prongs as well.

I would just note that the irreparable harm that we will suffer here is the deprivation of the rights of the moving states to bring their independent actions under state law against the Sacklers. And that the potential loss of those claims is certainly real enough to satisfy any requirements that it not simply be mere equitable mootness,

but equitable mootness plus a consequence, that that's the consequence here.

And then there are other cases also raised in the briefs that we believe are also compelling, that says that any time a state is prevented from enforcing its laws, it has also suffered an irreparable harm. Those two together, we believe, certainly satisfy the requirement that there be a form of irreparable harm shown here.

I will then turn, if Your Honor doesn't have questions, to the question of the balancing of the harms, which is the next factor here.

It feels to us that an awful lot of the arguments that the stay opponents have put forward basically can be described from the movie, "Blazing Saddles", where the sheriff who finds himself in a difficult spot -- played by Cleavon Little -- points a gun at his own head and manages to convince the parties that the threat to himself that he is posing are sufficient to allow him to be extricated from that position. And the reason I mention that here is because the harms that the stay opponents are positing here are ones that they are themselves creating to a large extent.

So first, as I've touched on already, is the question of the sentencing. I believe their argument is going to be that if sentencing occurs, but they can't

proceed, they will suffer harm. Well, the simple answer is for them to seek to defer sentencing until the appeals have run their course.

Second, we have these arguments that the Sacklers have the right to terminate the agreement if a stay is entered. And I find this an outrageous suggestion, Your Honor. I will note that during the hearing that took place on October 14th on certification of a direct appeal, there was another issue regarding a Sackler termination right.

Mr. Huebner stated emphatically to this Court that of course he had a waiver of that Sackler termination right, and that he would not be coming into the court without having a waiver of that termination right in his pocket. And the reason for that was self-evident. How could one think that Purdue would put in jeopardy the Sackler settlement agreement, the centerpiece of the plan? But that is what Purdue is arguing right here. That they granted the Sackler a walk right.

I will note that this walk right was slipped into the agreement at literally the last moment, while the confirmation trial was proceeding, after the evidentiary portion of the confirmation trial had closed, after all the testimony about how wonderful a settlement this was had already been placed on the record.

And I will also note that Purdue did not consider

this walk right to be significant enough to advise the Court and other parties, oh, by the way, we've posted an amended Sackler settlement agreement, and it happens to contain a provision that will allow the Sacklers to terminate this if there's a stay pending appeal, which a possibility of request for a stay was clearly contemplated by everyone.

So, now, how could this be? How is it possible that all the tremendous lawyers representing the stay opponents voluntarily put in jeopardy the centerpiece of the plan? Not because they were confident that there would be no appeal, nor that there would not be a motion for a stay pending appeal. It has to be that they could not seriously expect that the Sacklers would spurn all the benefits that they get under this plan and actually exercise this right, and rather, because they intended to use this provision as a means to bludgeon the courts into denying a stay. And we submit that that should not be permitted here.

Second argument that they put forward relates to the attorneys' fees that they themselves are incurring and will incur during the period of the stay. We believe this is also an outrageous point. If they seriously believed that the size of the fees that they generate were causing harms to victims of Purdue and the Sacklers, they ought to be finding ways to limit their fees.

To start with, it was not necessary for seven

oppositions to the stay motions filed by seven different parties to be filed. They could've coordinated a single filing. I know this could be done because the states routinely coordinate to present fewer filings to Your Honor.

More to the point, steps could've been taken during the case to curtail the amount of professional fees during the case, or to curtail the amount of fees that will be charged post-confirmation. But no. The only way in which the stay opponents suggest that fees ought to be controlled is by denying this stay to the Appellants. And we submit that that is too transparent to take seriously.

Then we reach what I believe is the far more serious concern, which is the delay in relief going to the victims of Purdue and the Sacklers. I just note that this is not a new problem. This is a problem that's been weighing on everyone through the over two years that this case has been pending. This did not suddenly become a problem. The victims of Purdue and the Sacklers needed help two years ago when the cases were filed. But that undoubted need was subordinated to the legal process of this case.

The plan opponents could have during the case established the emergency relief fund to provide faster relief to the victims. But they didn't. Now, we are in a post-confirmation pre-effective date period. There was the famous 82-day period before the plan could go effective,

which was put in there, as we understand it, for the convenience of the Debtors to allow them a deliberate period of time to undertake certain corporate transactions.

If the harm to the parties of not getting their money sooner was a serious possibility, that period of time could've been shortened as well, but it wasn't. The only time when this delay apparently becomes intolerable is when it's used as a means to curtail the stay that we're requesting and the preservation of our appellate rights.

The appealing states -- and especially in this context, where we are asking for a stay -- goes through the time of the anticipated ruling of the District Court, plus a meaningful period of time to take the issue to a higher court. The incremental harm to those parties that will occur during this relatively imitated period is far less of a kind of all the terrible delays that they've had to suffer through the case and does not provide an independent basis for denying a limited stay through this time period.

THE COURT: Well, I'm having a hard time following that point, Mr. Gold. I mean, it's still harm, and I think that the real issue is how great a harm is it in comparison --

MR. GOLD: I agree, Your Honor.

THE COURT: -- to the countervailing harm of giving the Appellants the opportunity to try to vindicate

their rights on appeal.

MR. GOLD: I completely agree, Your Honor. And it's a complicated issue because this is apples and oranges, if I may say. The harms that we have here are different in type, difficult to quantify, and so the Court has to engage in the kind of balancing. I'm just suggesting that the harm here will not -- we're not disputing that it really occurs, but this harm is one that the parties have lived with throughout the case because there were important legal principles or other things that were taking place. And we're suggesting that it does not outweigh here the preservation of our appellate rights.

THE COURT: Well, again, that may be the case through a relatively short period after what would normally be the effective date, because distributions in some measure would be made into the trust, but not out of the trust, for a period after the effective date. But the longer you go, the more the delay really counts, because there comes a point when (indiscernible) claims start being liquidated and the NOAT procedures are established, and at that point, the money really does start going out.

MR. GOLD: Well, I --

THE COURT: Have your clients and the Debtors talked about when that point is likely to be?

MR. GOLD: Well, as I said, Your Honor, what we

have attempted to do with the Debtors is to find a way to -- and again, using the model that was engaged with the trust advance motion to have the parties agree to allow various steps to take place, including the ones that Your Honor has listed -- and we have had, I have to say, little engagement or appetite for engagement from the Debtors or the other parties in terms of being able to parse.

I do agree that part of the benefit of having the stay be limited to the period of time that we've discussed in terms of getting us to the next level is that we can analyze more concretely what steps are going to occur, rather than looking at and allowing the next courts to be able to focus on what issues would be arising then, and what could be concretely happening then, and weighing that against the harms that might occur.

It is certainly for the purposes of the District Court's ruling, that by all evidence, Judge McMahon is keenly aware of the importance of having a decision done quickly. And frankly, again, the other benefit is that because she was aware of this, she was able to insist on a briefing schedule to enable that all to work.

And if we are going to the next court, should that be necessary, then, again, the Second Circuit could be in a position to condition a stay upon an expedited briefing schedule before the Second Circuit, which no lower court

could meaningfully be in a position to impose on the Second Circuit, which they could do themselves.

So we posit that the harm for this period of time is not sufficient to outweigh the importance of the appellate rights that are being preserved, and that the issue may have to be revisited by another court with its own timetable in place and depending on where the matters stand at that point.

And as I said, we are more than willing to try to work with these parties to find a way to allow transactions to occur, to allow even payments to go to needy parties, if there can be a way to structure that to not affect the appellate rights.

So now I turn Your Honor to the public interest component of the process. We submit that it is manifestly in the public interest that this plan be fully tested on appeal, not -- the Debtors seem to sometimes have the position that the only appeal that is meaningful here is appeal to the District Court. This case could have been in front of the Second Circuit already, had the Debtors agreed to certification of a direct appeal. But they chose not to.

THE COURT: Well, the Circuit would have had to have taken it too.

MR. GOLD: That's true, Your Honor. I'm just saying that the Debtor -- that we didn't reach that point.

And part of the reason why we didn't reach that point was that the Debtors at that hearing insisted that it was important that we go to the full process of first review from the Bankruptcy Court, and then review from the Court of Appeals.

And so we want to -- now that we are on that path, we want to make sure that all levels of appeal are preserved and not booted out through equitable mootness. And we submit that that is manifestly in the public interest, and that it is against the public interest that parties be permitted to design plans to create equitable mootness factors in them as a means of avoiding review. I mean, Your Honor, I can state that I received emails today of CLA programs that are already being designed and marketed to teach bankruptcy lawyers how to design plans that provide non-consensual releases and that can be protected by equitable mootness. The community and the country as a whole is watching this, and it is critical --

THE COURT: Equitable mootness --

MR. GOLD: -- that this is --

THE COURT: -- has been an issue in the -- at the circuit level for decades.

MAN: I understand, Your Honor.

THE COURT: And somewhat inexplicably to me the Supreme Court turned down cert this last term on two cases

that could've resolved that issue. That has nothing to do with this plan at all. And it would seem to me that as we just discussed, the public interest in avoiding harm, tangible harm, to the victims increases with time. And you're just ignoring that when you talk about the public interest.

And again, it's well-recognized that one issue, one element of the public interest, is the finality of reorganizations. So I think it's much more complicated than you're saying here, but I also think that what you're arguing for now is well beyond what you had been arguing for, which is some form of a stay through a ruling by the District Court. Because now you're talking about staying matters through a determination by the Supreme Court, which could be in 2024. And --

MR. GOLD: Allow me to clarify, Your Honor, because I understand why you might have thought that, but that's not what I meant to say. The -- I think we have been candid that we will -- that we intend to seek stays that go on to the higher levels. What I am now suggesting to Your Honor is that the stay that we would be obtaining from Your Honor would preserve our ability to seek further stays from higher courts --

THE COURT: Okay. Fine.

MR. GOLD: -- and that --

THE COURT: Then I -- that's fine. So we're really -- I think -- look, here, the public interest point very much dovetails with the balance of harms, as far as I can see. The parties here have agreed on the form of the distribution of the money under this plan and have touted it as something that is a single achievement. When I say the parties here, I mean both the appellees and the appellants.

So what we're talking about here is a dispute between the appellants and the appellees on whether more money can be obtained through this process because that's what we're talking about. We're talking about more money, and whether that warrants additional delay. And to me that just goes back to the balancing of the harms.

MR. GOLD: Well, Your Honor, the -- I would just clarify a few points of what you have stated. I do agree that the appealing states participated in the design of many features of the plan, and that we do believe that a lot of those features of the plan are salutary and are ones that we agreed to together. But that was always -- those were always being negotiated based on the predicate that other issues, principally the releases, could also be satisfactorily resolved, and unfortunately, they were not.

The -- I will also note that the issues that arise vis-a-vis the Sacklers, are not solely issues relating to the amount of money that can be paid. Although that is

certainly an important component of it, but there are other issues regarding, for instance, the Sackler agreement to have their name taken off of various institutions, about the scope of the -- of when documents can be available in the document depository -- or repository and other things that are not, that take this case beyond a mere matter of money.

And I again state that the appealing states are highly anxious to try to find ways to reduce the burdens on the ones that Your Honor has identified rather than to hold them hostage as a means of avoiding appellate (indiscernible) important question. Because we -- because all of these are -- all the things that Your Honor stated are matters of public concern. But where you have a -- where you have what as Your Honor has identified as non-frivolous, serious questions regarding the permissible scope of a -- of releases granted pursuant to a confirmation order, having those issues clarified on appeal we submit is a compelling public interest, notwithstanding the other matters that Your Honor has identified.

THE COURT: Well, those other matters are, I think, pretty eloquently laid out in the declarations of Ms. Juaire. I'm hoping I'm pronouncing that right, J-U-A-I-R-E, and Ms. Trainor, T-R-A-I-N-O-R.

MR. GOLD: Your Honor, I will --

THE COURT: I guess I've heard you and I

appreciate what you've said, Mr. Gold, about the State's willingness to work with the appellees on intermediate steps that minimize that countervailing harm that they detail.

I guess the point that I need to press is, are the three states prepared to accept some risk of equitable mootness as part of those steps. The U.S. Trustee apparently takes the position that it's not, which seems rather bizarre to me and contrary to the case law. But I don't know whether what you're offering here is just couched by saying of course we can't take a risk of equitable mootness, or is it willing to take some risk?

MR. GOLD: Well, Your Honor, our -- we -- first, we are agreeing to accept some -- our issue is not -- our view is not identical to the U.S. Trustee, which as you've obviously seen from the briefing that has been submitted. We have not taken a separate appeal from the advance order. We're not pursuing that. We are accepting that.

While there is in theory some risk of equitable mootness from that, we don't consider it to be a significant enough one that we are pursuing that. And so we are exercising some judgment in terms of what risks of equitable mootness we are willing to take and which not.

We also recognize that the framework that was adopted with respect to the trust advance order had a -- and in fact, also the structure that Judge McMahon adopted with

respect to her ruling involved having the various parties to the appeal stipulate that they were not going to use these matters as the basis for an argument for equitable mootness. Now, we recognize that that is not bulletproof, that it's --

THE COURT: No, I actually think it is.

MR. GOLD: And the higher court could --

THE COURT: I --

MR. GOLD: The higher court could make its own determination --

THE COURT: Yeah, I --

MR. GOLD: -- but again, we --

THE COURT: -- think it is pretty bulletproof. I mean, again, my quote from Judge Kaplan was focusing on constitutional mootness, which is really a different issue --

MR. GOLD: Yes.

THE COURT: -- as opposed to equitable mootness. It would seem to me very hard for anyone to rule that it was equitable to hold something as causing mootness when the very party that would benefit from that had stipulated that it wouldn't. That would seem --

MR. GOLD: Right.

THE COURT: -- at the height of not being equitable.

MR. GOLD: Your Honor, I have said very much the

same in my analysis of that question, although it's more meaningful coming from Your Honor than it is from a mere lawyer. The point I'm making is that if we -- so, if the parties -- what we have been proposing was that the parties stipulate that they would not seek to use the steps that we are suggesting that we would be willing to negotiate with them as the basis for an equitable mootness argument.

And while that is not nearly as bullet proof in the context of payments going to parties as it is in the context of establishing trusts or other such matters, we are certainly willing to seriously consider taking the risk that some other party might raise those things, notwithstanding the party's stipulation. But we think that having the parties stipulate to that would go a long way to allow that to occur.

That's far from the situation where if we say we're willing to allow certain things to go forward knowing that the other parties, like say with the sentencing where the Debtors have said let there be no mistake. When sentencing occurs, we are going to insist that that has equitable mootness concerns. That's a very different analysis for us than something where the Debtors have stipulated that they are not going to raise equitable mootness.

So if the -- all I'm suggesting is that if these

parties -- if their principal concern is in getting aid to the victims, then they should be willing to work with us to waive equitable mootness arguments and allow the payments to go forward. If on the other hand --

THE COURT: No, that's fine. I understand your point. Okay?

MR. GOLD: Okay, Your Honor. The -- Mr. Goldman is going to be addressing the issues regarding the declarations that have been submitted, so I will not further extend this hearing by stating them myself. And the -- unless Your Honor has any questions, I don't think --

THE COURT: Well --

MR. GOLD: -- there's anything --

THE COURT: -- are one of you going to address the bond issue?

MR. GOLD: I can do that, Your Honor. The -- we submit that this case is governed by the plain language of the rule that says a bond or other security is not required when an appeal is taken by the United States, its officer, its agency, or by direction of any department of the federal government.

And we have here the -- that is our circumstance. We are dealing with appeals that have been simultaneously or substantially simultaneously filed by the U.S. Trustee, which fits the category of the United States, its officer

agency, and by the states. We are raising substantially similar issues, or I would say that the U.S. Trustee has issued a broad panoply of issues that include the issues that we are raising on our appeal, and that based on that, no bond can be required on this consolidated appeal.

Certainly if the -- if no bond is applied or a stay is granted for the U.S. Trustee, there should be no bond for -- because the same stay will be in effect, and it's the same stay that will be protecting the U.S. as well as the states.

We also -- I don't have much to add to our argument that there are other cases that recognize an analogy between sovereign states and the U.S., although the rule does not specifically mention them, and that therefore finds it inappropriate to impose bonds on the states by analogy. But that's -- though we finally -- we would simply submit that the cases that the stay opponents founded were -- had nothing to do with our circumstances, had to do with bonds being required of non-government actors, and provide no illumination on what the Court should be doing.

THE COURT: So what do you make of the committee notes to Rule 8007(c) and (d), the 2014 committee notes, which state that (c) and (d) retain the provisions of the former rule to condition the granting of relief on the posting of a bond by the Appellant except when that party is

a federal government entity?

MR. GOLD: Well, Your Honor, I will make two points here. I think that that -- first, I would say that that comment is not directed to the circumstance where there are simultaneous appeals by multiple parties, and that the -- I would secondly point out that there is substantial case law saying that what the Court should be looking at is the language of the rule itself rather than the committee notes that provide distinctions that were not included in the language of the rule itself, and that because the U.S. Trustee is entitled to an unbonded appeal here, it -- there's -- there should be no bond. There'll be no point in having an additional bond when it's the same appeal.

THE COURT: So the general rationale for exempting the United States from the bonding requirement is that most judgments, and this is consistent with 28 U.S.C. 24 something -- the U.S. Trustee cites it -- is that the United States is good for it because it's a judgment against the United States, and the United States is always good for it.

Your interpretation of this rule would mean that if there was a judgment against the United States and against third parties, the third parties would have the benefit of the United States being good for its portion of it, and that they would have -- they could just have a free ride on that, and the Plaintiff should take the risk?

MR. GOLD: Well, Your Honor, I'm not sure what the judgment would --

THE COURT: No, I'm just talking about --

MR. GOLD: -- would be --

THE COURT: -- your interpretation of the rule, which would include, I think, that scenario, which doesn't seem to me to be a -- an interpretation that Congress would want.

MR. GOLD: Well, Your Honor, when -- since we are dealing here with states, and I don't believe that there's any serious issue regarding collectability --

THE COURT: Actually, Judge Posner thought there was in Lightfoot v. Walker, 797 F.2d 505 and 506 through 07 (7th Cir. 1986). So, anyway. But I guess there is the issue as to what we've just been talking about is the balance of the harms, and that balance may become significantly greater as time goes on. Before then, the Debtors have attempted to quantify that in the DelConte declaration.

But I'm not sure -- well, it's really a question for the Debtors as to the delay by three months, what does that mean? But I think what it means is it's more on the back end than the front end where there's significant loss. But I don't think there's any doubt that the cost for a lengthy delay of, you know, several months to a year or two

really is dramatic here in terms of dollars and cents. So it would seem to me that, as time goes by, the need for a bond grows dramatically to offset the vindication or not of the Appellant's right on appeal.

MR. GOLD: Well, Your Honor, I guess that gets back to the point that we discussed before why it may make more sense to have Your Honor stay -- take us through the relative short term when the costs are relatively contained and lower and allow a later court that -- a higher court that can have a better sense of how long it will be taking on the appeal resolve that issue.

THE COURT: Okay.

MR. GOLD: Thank you, Your Honor. I have nothing further to add at this point. I may have rebuttal points after the Debtors or another party's presentation.

THE COURT: Okay.

MR. GOLDMAN: Your Honor, Irve Goldman, Pullman and Comley for the State of Connecticut. May I be up next?

THE COURT: Yes, that's fine.

MR. GOLDMAN: Thank you, Your Honor. I first wanted to just for Connecticut adopt the arguments that we made by Mr. Gold for Washington and affirm that, you know, the principal form of relief that we are seeking at this point is our fallback, or what was previously described as a fallback position.

We are looking for a stay until 14 days after Judge McMahon issues her ruling, which I would note may very well come after December 8th, which is what the Debtors described as the earliest point when the effective date can occur, which is seven days after the 75th day after the date of the confirmation order.

And it seems unlikely that it will come after that date because we have oral argument, as Your Honor knows, on November 30th, and Judge McMahon has advised us that she starts a two-defendant criminal trial on December 7th. So that would give her less than a week to get out what I would anticipate is a very complex decision. So we would project that it would likely come after that trial has concluded. But I just want to circle --

THE COURT: What's on trial? It's oral argument. Oh, the criminal trial.

MR. GOLDMAN: Yes, correct, Your Honor.

THE COURT: Well --

MR. GOLDMAN: That's what we were advised.

THE COURT: Okay.

MR. GOLDMAN: And if I could just circle back for a moment to this apprehension that we have of equitable mootness based on the Debtor's indication that they'll argue the criminal sentencing will, you know, be the fulcrum for that in a stipulation that was filed with the District Court

on October 20th that dealt with their commitment not to argue that anything pursuant to the advance order or in the preparatory stages leading up to the effective date, they would not argue with the basis for equitable mootness.

It carved out in paragraph 2 the following provision. The stipulation does not address the criminal sentencing of Perdue or the effect or consequences of such sentencing on these or other appeals. So currently, they have signaled the intention to argue that, and I think the stay of the confirmation order would be the most effective way to prevent that from happening.

The reason I say that is because the plea agreement itself provides that the parties, meaning Perdue and USDOJ will agree to request that the sentencing hearing take place no earlier than 75 days following the date of confirmation. This contemplates a joint request. And so that if there is a stay of the confirmation order, there would be no reason for any party of the Debtors or the United States to request a scheduling of the sentencing hearing for the very reason that the Debtors have argued that if they are sentenced and thereby become a convicted felon, that would put their continued operation at jeopardy.

So I think the most effective way to deal with that would be to stay the order. And I think Mr. Gold also touched on this as part of the calculus of determining

whether there was irreparable harm. We contend the Court should not only consider the risk of equitable mootness, but the consequences that would ensue to the states if their causes of action are eliminated, which is unquestionably their property, not property of the estate. And in an equitable mootness scenario, that property will have been taken away without appellate review of whether the taking was proper.

I know Your Honor has concluded that the states will likely do better or will do better financially under the plan than they would if they were permitted to go against the Sacklers and other third parties. But that does not account for the character of these release police power claims as a deterrent to future wrongdoers and simply assumes incorrectly that their value is purely financial.

Now, if I can turn to the balance of the harms, and specifically the declarations that have been submitted by the various parties. As Your Honor is aware, we've made some discreet, detailed objections to the admissibility of some portion of the declarations, and which of course must follow the Rules of Evidence. Everyone's trying to establish a record here, and so applying the Rules of Evidence is important in this context.

And under the Rules, the testimony offered by a declaration has to be based on personal knowledge, not

hearsay. The sufficiency of personal knowledge has to be established by what is in the declaration. It can't contain conclusory statements or arguments. It has to set forth specific facts. And to the extent a lay opinion is offered, it has to be based on the declarant's own person knowledge and must not be based on specialized knowledge. And all the declarations, to one degree or another, fails to satisfy one or more of those requirements.

Mr. DelConte's declaration, for example, talks about operational risk to the Debtors. He first says that the State could result in delay in bringing about public initiatives to market. He says "could". He doesn't say what initiatives are being planned to go to market during the period of any stay, no facts establishing what his personal knowledge of what the initiatives are. He's obviously not a member of Perdue's public initiative group.

Granted, he is a financial advisor for the company, but I think here he is being used as a type of all-purpose as an expert for all things Perdue. And I don't think that he can be used to just say in a conclusory fashion some unspecified initiatives will be delayed during a period of the stay we're requesting. In part four of the declaration --

THE COURT: Well, they would certainly be delayed if the Debtors weren't able to engage in any business, right

because of the criminal plea?

MR. GOLDMAN: Well, if they pled -- correct. If they were a convicted felon, according to the Debtors, that would restrict -- eventually, maybe not automatically as I'm told, but eventually it would lead to the termination of their licenses and the ability to do business unless the properties could be transferred to NewCo at that point.

But as I had indicated, Your Honor, if Your Honor stays the order for the period we're requesting, it is highly unlikely that that criminal sentencing will take place during the period of that stay. And again, those unspecified initiatives that he says aren't -- will be delayed --

THE COURT: That's not really an evidentiary objection. You're just objecting to the fact that it doesn't say very much, and I get that. I understand that, but that's not an evidentiary objection.

MR. GOLDMAN: Then I'll move on, Your Honor, to what I think is an evidentiary objection. It's part 4 of the declaration, which is a recitation of what Mr. DelConte believes could be the operational risks if the stay is granted. Based on how upset the employees, vendors, and customers would be if there was a delay occasioned by the stay, clearly that's based on what he was told the Debtors told their customers, vendors, and employees.

And certainly, Mr. DelConte is not competent to testify as to how other parties, namely the customers, vendors, and employees, would react to a stay of limited duration, particularly when they have certainly hung in there and not walked away during the two-plus years that this case is undergoing Chapter 11. There's certainly no basis for believing that now suddenly that the -- whether a confirmation order has been appealed, that they wouldn't tolerate a few additional months of delay.

In fact, if anything, there was greater uncertainty in terms of what would happen with the --

THE COURT: Mr. Goldman, can I interrupt you? Are you testifying now --

MR. GOLDMAN: Certainly.

THE COURT: -- or are you making argument based on your assessment of how people think?

MR. GOLDMAN: Well, that is argument, Your Honor.

THE COURT: And that's how I would treat this.

MR. GOLDMAN: And --

THE COURT: This is his prediction based on his knowledge of the Debtor's business of what would happen. Not what will happen, but his prediction.

MR. GOLDMAN: Well, again, I think that that -- he wasn't offered as an expert, and I think he is testifying based on what he was told. And --

THE COURT: Well, that's what you're saying too. I'm just saying it's a prediction.

MR. GOLDMAN: Well, Your Honor, I'm not offering my argument as testimony yet, but he is.

THE COURT: Well, only for this --

MR. GOLDMAN: So --

THE COURT: -- I will treat only for that purpose is what he reasonably believes based on his knowledge of the company.

MR. GOLDMAN: Let me move on to Mr. Gard. And in paragraph 3, again, this really goes over what Mr. DelConte testified to, and that it's his belief that a delay, though materially, would give us Perdue's residual value and talking about the uncertainty of the bankruptcy process. Again, he -- this is lay opinion. It's not supported by facts establishing it's within his personal knowledge.

And this is in the province of experts to say what Perdue's residual value might be given the uncertainty and delay of -- and stay of the limited duration that we're requesting. And in paragraphs 14 and 16, he offers the prediction that as a result of the delayed distributions during the stay, it's quite possible that additional Americans will die, and then suggest that a stay will allow Americans to needlessly die, who would not have died but for a stay.

Now, this is obvious argument as well and not fact. I mean, evidence of widespread death as a result of stay of limited duration has got to be based --

THE COURT: Well, again --

MR. GOLDMAN: -- on more than --

THE COURT: -- it depends on what the length of the stay is. I just -- look, on your first point, the only example that he gives for the effect of a stay is if the plea goes forward without the plan being implemented. And to me that is a meaningful effect. To the extent he's talking about other effects on keeping senior employees, I agree with you.

I don't think he's really -- unlike Mr. DelConte, he's not really in a position, you know, other than anyone else or different than anyone else to talk about that point. But on the plea point, I understand his point.

And then, look, the testimony is based upon I think an undisputed fact that roughly 200 opioid-related overdose deaths occur, and that those deaths have been increasing at remarkable percentage rates over the last couple of years. And I think he and -- he is perfectly positioned to discuss that point given his job, which he's required to assess how best to deal with that issue for his state.

And I take, again, his prediction that at some

point -- and he doesn’t really say when that point is, but at some point, a stay can lead to additional deaths if it results in a meaningful delay of funds. I don't see how anyone could dispute that.

MR. GOLDMAN: Your Honor, I do -- the point I'm trying to make here is that Mr. Gar and the other declarations are trying to draw a causal connection here then because distributions will be delayed, that will result in grievous harm. And there just -- that really is in the province of experts.

What will happen, they haven't said the amount of funds that are going to be delayed. What would otherwise be disbursed and used by the various constituents --

THE COURT: The record is --

MR. GOLDMAN: -- during period of --

THE COURT: The record is crystal clear that every dollar counts because there is no surplus. If that weren't the case, then your client's lawsuits are meaningless. This is a really strange exercise, Mr. Goldman, I have to say.

MR. GOLDMAN: Well, I make --

THE COURT: And I guess --

MR. GOLDMAN: -- they're --

THE COURT: -- what you're saying is your clients really don't think this money counts?

MR. GOLDMAN: No, that is not --

THE COURT: Is that what you're --

MR. GOLDMAN: -- what I'm saying, Your Honor.

THE COURT: -- ultimately saying here in terms of saving lives and addressing the opioid crisis?

MR. GOLDMAN: No, it is not, and I would acknowledge that it certainly does count. The point I'm trying to make is that they are trying to translate that into grievous harm based on not knowing what the amount is going to be disbursed during this limited duration and for what purposes.

THE COURT: But he wasn't responding to just a limited duration. The motion sought a stay through the entire appeal process through the Supreme Court. So these declarations address through the end of 2023 and through the end of 2024. I agree with you. If you're looking for or if I'm considering a shorter injunction, then this information, although still meaningful because if anyone dies, that pretty important.

MR. GOLDMAN: Yes.

THE COURT: Plus all of the other societal harms that flow from not having the funding start. But if the funding isn't really going to start in any event until -- let's pick a date. And I'm not talking about the effective date now, I'm talking about when funding would actually start. Let's say that's January 1, then your point is a

point on argument, not an evidentiary point, which is that this declaration doesn't say that there's any harm specifically before January 1 because it doesn't establish that the funding would start then -- before then.

MR. GOLDMAN: Well, that is what my argument is directed to.

THE COURT: All right, but --

MR. GOLDMAN: -- Your Honor. I understand --

THE COURT: -- I don't think that's an evidentiary point. I think that's an argument. That's a point you can make in argument.

MR. GOLDMAN: Very well, Your Honor. I'll -- I will move on. And I would echo what Mr. Gold had said is that even beyond that date, we would welcome any sort of interim measures for disbursing funds for abatement and other purposes, similar to the ERF. An ERF2, if you will --

THE COURT: Well, the ERF didn't happen --

MR. GOLDMAN: -- and could even be --

THE COURT: -- so but I take your statement now seriously.

MR. GOLDMAN: Thank you, Your Honor.

THE COURT: Okay.

MR. GOLDMAN: I was just going to make the point it could be implemented pursuant to 363(b) and not pursuant to the plan to remove any idea that it would be -- cause

equitable moot.

THE COURT: Okay.

MR. GOLDMAN: Just moving onto the declarations that the UCC submitted, I think we -- from the two members who have experienced firsthand the devastating effects of the opioid epidemic, I think that, you know, it has to be acknowledged that of all the people who have a right to express an opinion on what will occur due to the opioid epidemic if a stay is issued, is these two people.

However, that does not make certain parts of their declarations admissible, which is really what we have the objection to. I think, you know, they have to be given all the solicitudes for the personal loss they've suffered and admiration for what they have turned that into in terms of positive giveback. And I hope the objections or challenges to certain portions of their declarations will be taken in that vein. They're simply technical in nature in terms of establishing what record is made on these proceedings.

THE COURT: Well, again, I mean, I think you're objecting to one of the declarants saying that various forms of treatment have stopped over the last year or the last several months for want of funding. And asking me to draw an inference that, under the plan, similar occurrences wouldn't -- would be prevented in the future, I think she -- again, I think that the witness can make a prediction of

that. You know, take it for what it's worth.

She's much closer in my mind to the facts that she outlines than just someone who isn't looking at it from the outside. But ultimately, I think it's the same point, which is it depends on when the funds start flowing and what can only make an educated prediction, which is certainly what the members of the UCC, including these two people, did and are doing. So that's how I treat those types of statements.

MR. GOLDMAN: I would just reiterate the point, Your Honor. There is going to be evidence that there is incalculable loss, which is the way it's phrased in one of the declarations. And I really think it should be the province of expert testimony. It is based on some specialized knowledge as to a prediction of what is going to occur and (indiscernible).

THE COURT: Well, but again, I -- look, I guess it depends on what you mean by the term "incalculable". You could certainly calculate the monetary costs of someone dying and their relatives having to take care of their children. But it is perfectly legitimate to say that actually isn't calculable. It may be calculable for purposes of posting a bond, but I don't think these two declarations are submitted for that purpose, for determining what the amount of a bond would be.

I think they're submitted for the point, which I

view as one that is adequately supported, that where you have this number of deaths due to opioid overdoses occurring on a daily basis, and you have insufficient funds as acknowledged by all of the lawsuits, including by the State of Washington and the State of Connecticut, that the more money you have, the fewer people will die. I mean, I don't see how you can dispute that.

And maybe it's one person. Maybe it's 100, but to me that's incalculable, and it's -- it pretty -- I think it does offset in terms of the balance of the harms, someone's right to pursue their appellate rights to the Supreme Court where the Supreme Court has denied certiorari on these various issues multiple times in the last decade. So again, that applies primarily, if not entirely -- and I'll hear the Debtors on this, of course, and the other parties, including the UCC's counsel, to the request for an injunction through the entire appellate process.

It may not apply in a meaningful way to an injunction through a ruling by the District Court where it's not clear to me that money would be flowing in any event during that period as opposed to personal injury claims being liquidated, as opposed to the 14 days when the abatement procedures after the effective date are supposed to be submitted, etc.

But I just -- I don't understand how in one breath

the State Attorneys General of Connecticut, Washington, and Maryland can say that their rights to decide for themselves how to pursue monetary claims against the released parties are of critical importance without focusing on the consequences of the delay caused by the -- that right.

MR. GOLDMAN: Well, Your Honor, it's one of the reasons why we did restrict and scale back the request that's before you now.

THE COURT: Okay. But I'm not going to --

MR. GOLDMAN: Which is a --

THE COURT: I'm not going to exclude anything in these two declarations other than, again, where obviously the declarant is making a prediction or stating her view as to the cause of something. It's not for the truth, but rather for her evaluation of that cause or prediction, which is what people who serve on unsecured Creditors' committee, including this one, that net 200 times and over 700 separate communications does.

MR. GOLDMAN: So except, Your Honor, that is all I have.

THE COURT: Okay. All right.

MR. EDMUNDS: Your Honor, if I --

THE COURT: Go --

MR. EDMUNDS: This is the --

THE COURT: Why don't you go ahead, Mr. Edmunds --

MR. EDMUNDS: Oh, I'm sorry. Go ahead.

THE COURT: -- and then I'll hear from Mr. Underwood?

MR. EDMUNDS: Okay. I just -- I -- thank you, Your Honor. I will just try to hit on some points that go to the second part of my argument that haven't been said so far to try to make it quicker. But I think that one issue that's been identified is the critical importance of the sentencing that it may have in creating a possibility of equitable mootness. And people have talked about already and argued that there is a chance there, including from some of the effects of the sentencing upon the Debtors, that may produce the grounds for equitable mootness may create irreparable harm.

But there's one other thing that people haven't talked about yet, and that -- and I am not an expert, but I have some experience with the difficulty of changing a sentence once it's imposed. There are constitutional, statutory, and federal criminal procedures, doctrines and issues that arise that may make it hard to undo a sentencing once it's in place. And I think that that may be one of the sources for the Debtor's clearly apparent position that, you know, that they will not agree that this -- to any stipulation against the equitable mootness of the effect of the sentencing of Perdue in the District of New Jersey.

I think that that's a huge issue that happens before the effective date that could be significant in its effects. And I don't pretend to know everything about it. I don't know the criminal doctrines.

THE COURT: Let's just move on. Okay. You raised the point, but there's no reason talking about it further if that's the extent of your knowledge. So we should move on.

MR. EDMUNDS: Well, I think -- I mean, I think, you know, the basics of it, the due process clause, the double jeopardy clause, Federal Rule 35, and certain provisions of the U.S. Code do place limits on it. I think that that's -- I mean, in part, it's hard to anticipate where that will go in advance, and everybody has that same difficulty. So I think that's an issue there, and I think others have talked about the immediate effect on Perdue and its business.

The -- our -- moving on, our motion raised other issues of irreparable harm that are not related to -- and we did not rely on the possibility of equitable mootness. We talked about in our original motion in September, the cost to the estate of going forward with a plan that may be altered or reversed on appeal. And part of that was related to the trust advances issues, but it's also related to the fact that if you look at the fee statements that are coming in, a whole lot of money is being spent on attorneys' fees

from the estate to reimburse the pursuit of the plan, things that may --

THE COURT: Mr. Edmunds, I've never seen that as a basis for irreparable harm to an Appellant. Ever. And --

MR. EDMUNDS: I think that the --

THE COURT: -- frankly, it goes to the assessment of merits. So I guess to me, that just doesn't make sense, that argument.

MR. EDMUNDS: I mean, I -- the point I would make, Your Honor, is that if potentially millions in fees are expended from the estate in pursuit of implementing the plan, that's money that the estate doesn't get back. It may not -- in fact, I'm -- I agree it would not equitably moot an appeal, but --

THE COURT: It's not anything of an equitable mootness.

MR. EDMUNDS: But it is still irreparable harm.

THE COURT: It's not a basis for irreparable harm. It's not -- cite me one case on that point.

MR. EDMUNDS: We really don't have a case, Your Honor. It's just --

THE COURT: Then please move on.

MR. EDMUNDS: -- logical that if the estate --

THE COURT: That is not a basis for irreparable harm. It just isn't.

MR. EDMUNDS: All right. I will move on. The other irreparable harm that exists, though, is I think the possibility of implementing the plan and changing relationships, and then you're having to roll it back if it's changed or if it's reversed.

THE COURT: Is that another word for mootness.

MR. EDMUNDS: No.

THE COURT: No?

MR. EDMUNDS: I don't think it is, Your Honor. I think that there are things that the Court has ruled, and Debtors have stipulated that don't constitute irreparable harm that are happening -- or that don't constitute a ground for equitable mootness that are happening right now that do constitute a potential irreparable harm. How significant they are --

THE COURT: Like what?

MR. EDMUNDS: -- is I think --

THE COURT: What are you talking about?

MR. EDMUNDS: They are, to the best of my understanding, going about forming structures, registering. I understand that there is regulatory activity that is involved on the sort of licensing side. They are -- and they're continuing their operations, moving forward with operations amid uncertainty. And there's been a lot of, I guess, question in the papers of whether there's evidence of

the effects of that uncertainty on the business.

But I would point out that these are the very things that they use to justify their first day motions. And the -- in docket number 3, the declaration of John Lowne changing things --

THE COURT: So can I interrupt --

MR. EDMUNDS: -- changing their cash management --

THE COURT: -- you? So is --

MR. EDMUNDS: -- systems.

THE COURT: Is the State of Maryland not amenable unlike the State of Washington and the State of Connecticut to permitting new code to be formed, for example? The types of stipulations that Mr. Gold and Mr. Goldman were referring to.

MR. EDMUNDS: I think I'd have to -- we are amenable to some form of agreement, but I think I would have to look at the precise contours of that and make an evaluation as to how serious it was. So not as I sit here today, I don't think I can agree to that without some sort of detail about what it is.

You know, it -- there are risks and there are harms inherent in anything that happens, and I think it requires sort of a precise evaluation as to whether we would agree to that. And I'm just not -- I don't even know exactly what the requirements or what the permissions would

be.

THE COURT: Well, the general concept would be that -- and I believe Mr. Gold laid this out -- that the appellees would not argue equitable mootness based upon a transfer of the Debtor's business as provided for under the plan to NewCo and making the initial distribution under the plan. Either under the plan or in the form of a 363 motion.

MR. EDMUNDS: Your Honor, I mean, I think that the -- things that significant, there may be ways you could -- nuances that you can remove from it, but I think that things that significant carry with them the possibility of irreparable harm. Both from the possibility of mootness and from the sheer fact that you might be unwinding, which independent of equitable mootness will cause some amount of loss. And it may not add up to the amount of loss that would --

THE COURT: Let me make sure I understand --

MR. EDMUNDS: -- could be substantial consummations.

THE COURT: -- this. You lost below, right? You lost. You're now seeking a stay pending appeal, and yet you're arguing that if you win, which is an "if", the cost of unwinding itself is irreparable harm? That's really what you're saying?

MR. EDMUNDS: I think that there are costs

associated with going forward now, both to the estate and to everyone else, that warrant consideration as part of the balance of hardships that --

THE COURT: So you're saying irreparable harm would --

MR. EDMUNDS: -- you know, that the Court has to undertake.

THE COURT: You're saying irreparable harm is literally proceeding with the order itself.

MR. EDMUNDS: I think -- again, I would have to look at the details of the --

THE COURT: Mr. Edmunds --

MR. EDMUNDS: -- specific exceptions.

THE COURT: -- look, do you have anything more to say on any --

MR. EDMUNDS: Yeah, that's usually --

THE COURT: Do you have anything more to say --

MR. EDMUNDS: I do.

THE COURT: -- on this point or any other point?

MR. EDMUNDS: I do, Your Honor. I mean --

THE COURT: All right.

MR. EDMUNDS: -- I will try to move on from it, but let -- but I would say -- I would note that the very hardships that I'm talking about are written throughout their first-day motions and in the declarations that they

submitted in support of that. They talk about changing structure and changing organization and changing management.

THE COURT: But that's before they won, and your state is appealing it. It's a big difference, so move on. Honestly.

MR. EDMUNDS: I think the hardships --

THE COURT: You know, this wasn't made in your objection.

MR. EDMUNDS: -- as a matter of fact, so --

THE COURT: This wasn't made in your motion or your reply, and if it was, it would've just been devastated. So move on. This is just silly.

MR. EDMUNDS: It was -- just to be clear, Your Honor, it was in our motion. And we did not rely on equitable mootness, but I will move on.

I would also just talk briefly about the issue of the irreparable harm that the appellees raised, the objectors raised. I think the Court is correct that we all see it as getting more money for the abatement, for the opioid crisis, and to address the opioid crisis is important. But there are other trades that are made in pursuit of this plan that I think make it hard for them to establish that the harm that they suggest will occur will actually occur from a short stay --

THE COURT: Okay. We covered --

MR. EDMUNDS: -- to the appellate process.

THE COURT: We covered this, Mr. Edmunds. I -- we -- we've covered this point. And in fact, I generally agreed with the other -- with your colleagues on this. So I don't think we need to go over this again.

MR. EDMUNDS: Well, I'd just say that there is the deterrence effect and there are the other, I think, benefits from doing more, that the State of Maryland at least sees from proceeding to do more to enforce its laws. And I think that those have sort of a canceling effect on, you know, any hardship that -- concrete hardship that could be raised by the other parties.

So with that, I will -- I think those are the critical points, and I'll rely on others for their previous arguments.

THE COURT: Okay. Thank you.

MR. BASS: Judge Drain, this is Mr. Bass, Ronald Bass. May I come in?

THE COURT: Well, I -- someone was actually in the queue before you. Let's do Mr. Underwood first.

MR. BASS: Oh, okay.

THE COURT: And then we'll -- I'll hear from you.

MR. BASS: Okay. Okay.

MR. UNDERWOOD: Thank you, Your Honor. Allen Underwood, on behalf of Canadian municipalities -- certain

Canadian municipalities and First Nation creditors.

Very briefly, I'd like to again adopt the positions of Connecticut and Washington as stated here and in their papers. I think what's very important and what we've emphasized throughout this case is that the Canadian municipalities and First Nations are a little different than the states with regard to certain legal issues. And that has an impact on, A, what Judge McMahon is deciding but it also has an impact on the irreparable harm issue that we're -- I think we're discussing. There's no question that the Canadian municipalities have read direct claims against non-debtor, shareholder released parties.

THE COURT: I think there's a substantial question, and that's what I found in my ruling.

MR. UNDERWOOD: I believe under Canadian law, they have claims under the Competition Act, that -- it's a fairly broad act that enables direct claims against -- and this is I guess a fundamental problem, Judge, is that we've got a corporate structure that has parallel ownership.

It's not -- it's not like a typical subsidiary relationship. One -- is controlling multiple -- corporations. In effect, the shareholder -- whether through non-debtor entities that are U.S. entities or direct action on boards -- are controlling those entities. And under Canadian law, there's a basis for direct claim against those

parties.

Obviously the problem or the question or the interpretation of the plan and whether or not the release as granted occupies the territory fully -- that's the structural problem -- the appeal is we believe meritorious. And ultimately -- irreparable harm which is that ultimately these Canadian creditors stand to lose the claims they may have against U.S. non-debtor entities or U.S. released shareholders -- confirmed plan.

It's a structural problem. It's a structural problem that the debtors and the Sacklers created when they created their corporate structure. That's all it is. I wish I could change it.

THE COURT: Well, all I will note is I don’t think you addressed this legal argument on the nature of the Canadian creditors' claims anywhere in your motion.

MR. UNDERWOOD: I actually believe that there is a reference.

THE COURT: Where is it?

MR. UNDERWOOD: Within -- certainly within my reply. I actually quote a portion of the brief. I think -- let me pull up the page that referenced this issue. It's cited in the reply, Your Honor. And it's more than alluded to in the actual motion.

And to remind you, Your Honor, the motion was

actually filed in advance of the briefing before the district court. So I believe if we look at, yeah, Page 4, Paragraph 8.

THE COURT: Okay. I see it.

MR. UNDERWOOD: So there is a colorable basis for a claim by my clients against non-debtor, third-party released parties. And irreparable harm, as we cited in the reply and I think in the moving papers, is the loss of that financial claim or right.

So that's a principal question that I think in the first instance you're looking for which is what is the irreparable injury in the absence of a stay. And that is obviously the concern.

I think in terms of the resolution of the matter, I think Your Honor is very thoughtful on this question of a longer stay versus a shorter stay, a stay through finality versus a stay more or less governed by a Rule 8025. And certainly I think that the Canadian appellants take the position that a stay 14 days -- through 14 days after the rendering of the district court decision is more than adequate at this time.

But I do think it is a thoughtful question by Your Honor because honestly the circumstance where a trial court would be looking at whether or not to stay its own decision for longer than any determination that might be made by an

appellate court would be a circumstance where the trial court recognized that there's some aspect, be it constitutional or structural, in the plan that would be jeopardized were it not stayed, meaning that there's something about it that deserves finality. And I would leave that question to Your Honor's best judgment.

But I would also repeat that in terms of the stay, the lesser of the two alternatives that Your Honor described is certainly -- is certainly acceptable to the First Nations, without waiving whatever Your Honor might decide about a longer or a larger stay.

I think there's a fundamental interesting question with regard to the sentencing and the plea agreement, and it is a problem. And I think in terms of it, I've read the plea agreement many times. I see it as little more than a financial settlement, and that's what we do in this court. And ultimately I'm not aware of due process issues that would bar a stay through the date of sentencing with regard to the defendants.

I think it makes a huge amount of sense because whether or not the sentencing gives rise to equitable mootness is going to impact what may happen subsequent to the appellate process because obviously you've got your superpriority claim that may come into effect if for any reason the terms of the plan are modified such that -- you

know, such that the plea is -- the plan isn't funded. So that would be the concern.

So although certainly the Canadian First Nations agree that the lesser of the two stays that Your Honor had explained would be sufficient here, I would request that the Court be mindful of the fact that the sentencing will have a material impact on this case and, depending upon the results of the appellate process, it may completely impact whether or not the assets of the debtor can be liquidated and how, if it came to that -- I don’t think anybody wants it to come to that, but if it did, the fact that the sentencing had gone forward might be a problem if it's not a basis for equitable mootness.

So ultimately, Your Honor, I mean, I think that's, you know, by in large the points that I wanted to make or things that perhaps I wanted to highlight from our concern. Ultimately I think the harm that we have here is an interesting circumstance of -- so effectively the IACs are non-debtor parties.

Those are the assets that in part, over time, will fund the trust in the United States. My clients are presently stayed from pursuing those assets. Whether or not that remains to be the case will be the subject I suppose -- and the determination before the CCAA court in Canada which is pending for December 1. And that's another example.

I'm not sure if it's irreparable harm. But it is an instance of another intervening deadline with regard to an international matter where it might be worth the consideration of the Court of the fact that a stay here would probably relieve that Canadian court of a difficult decision. And maybe I'm wrong. I don't know. But that would be my take on it.

So, but ultimately I think the debtor has ultimately the benefit of these IAC assets. These are assets that ultimately my clients would be seeking to recover from if they're permitted to do so by way of appeal or before the CCAA court.

And I'm making this argument with reference to the bond issue because, first of all, I'm not aware of the debtor having an affirmative claim against the CMFN. Frankly if they're sovereigns, there's a question of whether or not there would be an applicable need for a pond under that circumstance.

But ultimately what's interesting is that it's arguable that the debtors in fact have a lien on Canadian assets by virtue of the settlement such that I would say whether or not Your Honor finds a need for posting of a bond by any other appellate creditor here, ultimately because of the fact that these Canadian assets are dedicated under the existing plan and settlement and trust to the debtor, that I

think there's a strong argument that the debtor is protected and there should be no need for an appellate bond with regard to the Canadian creditors here. That's all I have to say --

THE COURT: I'm sorry. What Canadian assets are you referring to?

MR. UNDERWOOD: Purdue Canada. At a bare minimum, Purdue Canada because it's dedicated to -- you know, to sale and contribution to the debtor. I can't -- I can't speak, and don't want to speak directly to the extent to which Purdue Canada has been securitized pursuant to those settlement agreements. But it may have been.

THE COURT: But the bond would be to protect against the damage, if any, caused by the delay or any other factor that the stay would occasion. So it would be something beyond what the debtors already have.

MR. UNDERWOOD: Right. But that's presuming that there is -- I think the argument would be that -- and I do think there's some case law to this effect, that, in effect, the debtors already have a form of a lien. I agree --

THE COURT: But it's not a lien on your clients' assets. It's their own assets.

MR. UNDERWOOD: It's not --

THE COURT: They already have it. They already -- no, but they already have it. The bond would be to bond

against damage that your clients would cause.

MR. UNDERWOOD: Right. I would -- I would differ. But thank you, Your Honor. I appreciate your --

THE COURT: Well, I mean, that was the result in the Adelphia case. Okay. Just 361 B.R. 337, S.D.N.Y. (2007). Excuse me. Okay. Thank you, Mr. Underwood.

MR. UNDERWOOD: Thank you, Your Honor.

THE COURT: Okay. Mr. Bass, are you still there?

MR. BASS: Yes. I'm here. I'm here, Your Honor.

THE COURT: Okay. All right.

MR. BASS: Well, I also filed a motion for a stay. Go ahead. What were you saying? I apologize.

THE COURT: No. I can hear you fine.

MR. BASS: Oh, okay. I had filed a motion for a stay, and I have gotten an order from Judge McMahon to have my briefing on the 19th. So I asked her an extension of time. So I'm asking you wait until she hear my motion -- I mean my brief, then we can proceed. So that's what I'm waiting for, her order of an extension of time.

THE COURT: Okay. Well --

MR. BASS: Besides -- one more thing. And I'm trying to get that merged. The cases that I have in the bankruptcy court with the Mallinckrodt to merge it with this here so she can handle both of them -- both of them, both of the cases.

THE COURT: All right. Okay. Anything else?

MR. BASS: No. I'm just waiting for -- you know, grant me the -- that order to stay as well as adopt the position --

THE COURT: I'm sorry. I heard you through, "As well as you adopt," and then I couldn't hear the rest.

MR. BASS: No. I said adopt the position of Lauren (ph), the attorney, the female attorney who came on, I said I am adopting -- I am adopting her position.

THE COURT: Okay.

MR. BASS: -- against the shareholders and, you know --

THE COURT: Okay. All right. Well, on your first point, the briefing schedule set by Judge McMahon on your appeal of the confirmation order is not the subject of a -- it's not something that I can stay. It's not my order, and it's not really covered by the bankruptcy rules. That's something you'll have to take up with her --

MR. BASS: Right.

THE COURT: -- whether you get an extension or not. So that's not really an appropriate subject for a stay that I would be considering.

MR. BASS: Okay.

THE COURT: And the same goes for your desire to have the district court consider together your appeal of the

confirmation order and the other litigation that was the subject of your motion that I heard back in mid-October.

MR. BASS: Right.

THE COURT: And I denied that motion in an order entered on October 15th that's at Docket Number 3958.

MR. BASS: Right.

THE COURT: But again, if any of that litigation is to be consolidated with your appeal, that's really up to Judge McMahon. It's not -- it's not something that I could rule on.

MR. BASS: Oh, all right.

THE COURT: Okay. Okay. I think the only movant that I haven't heard from is Ms. Isaacs, who adopted the motion filed by the State of Washington, and of course we've heard the State of Washington and the State of Connecticut at length. So I don’t know if you have anything further, Ms. Isaacs, to say. No? All right.

It's quarter to 2:00. We've obviously been going for a long time. I'm going to take a break for lunch, and be back at 2:30, at which point I'll hear from the objectants and, if warranted, brief rebuttal. And then I'll give you my ruling.

(Recess)

THE COURT: Okay. Good afternoon. We're back on the record In re Purdue Pharma, LP, et al, and the motions

by various parties, various Appellants, for a stay pending appeal of my confirmation order in the so-called advance order or preparations order. And we're turning to the objectors at this point.

MR. KAMINETZKY: Good afternoon, Your Honor. Benjamin Kaminetzky, of Davis Polk, for the Debtors. I see Ms. Isaacs is on the line.

THE COURT: Okay.

MR. KAMINETZKY: Do you want to --

THE COURT: Well, I had asked whether Ms. -- before we broke, I had asked Ms. Isaacs whether she wanted to add anything to her motion, which adopted the motion by the State of Connecticut and the State of Washington and didn't get a response. So, Ms. Isaac, I don't know if you have anything more to add to what you filed? You're on moot.

MS. ISAACS: I'm sorry. Thank you for taking the time to hear me this afternoon. I understand you called me before lunch break.

THE COURT: Yes.

MS. ISAACS: There's been multiple emails going back and forth. I am having a great deal of difficulty with the Clerk's office in getting the Zoom links and getting onto Zoom. As for anything to be added at this time, I stand with the Trustees and all of the states that are in

disagreement with what's going on with the appeal. And that's all I have.

THE COURT: Okay. Thank you. All right. So I'll hear briefly from the objectants and, again, I read the objections and all the other pleadings. I would like to focus again primarily, I think at this point, on the shorter term stay, the alternative request by the movants for a stay through the ruling by the District Court of some or all of the confirmation order, or perhaps just the effective date.

I also note that I have a number of declarations, which we've already discussed during the discussion of Connecticut and Washington's motion. I don't know if you want to -- I mean, different people have put up these different witnesses, but I don't know if you want to deal with those first or you have a time when you want to introduce those declarations. I leave that up to the objectors also.

MR. KAMINETZKY: Thank you, Your Honor. Again, Mr. Kaminetzky, of Davis Polk, for the Debtors. So I guess I could move for the admission of Mr. DelConte's declaration, just to get that over with at this point. I could address --

THE COURT: Okay.

MR. KAMINETZKY: It sounds like the Court has already ruled on, I guess it was the motion to exclude that

testimony. I'm happy to respond to the points you've made --

THE COURT: No, I --

MR. KAMINETZKY: -- but it's sounds like we've done that already.

THE COURT: I did. I ruled on that. So is Mr. DelConte available?

MR. KAMINETZKY: Yes, Your Honor. He's here.

THE COURT: Okay. Can you put him on the screen?

MR. KAMINETZKY: Yes. I'm told any second now.

THE COURT: Okay.

MR. KAMINETZKY: You know, he was in his -- I'm sorry.

THE COURT: Okay. Can you hear me, Mr. DelConte?

MR. DELCONTE: I can. Can you hear me?

THE COURT: Yes, I can. Thank you. And see you as well.

MR. DELCONTE: Can you hear me?

THE COURT: Yes.

MR. DELCONTE: Okay.

THE COURT: And I can see you too. So, Mr. DelConte, you submitted a declaration intended to be your direct testimony in connection with the objection to the stay motions. It's dated October 22, 2021. Would you raise your right hand, please? Do you swear to tell the truth,

the whole truth, and nothing but the truth, so help you God?

MR. DELCONTE: I do.

THE COURT: Okay. And it's D-E-L-C-O-N-T-E, J-E-S-S-E?

MR. DELCONTE: That's correct.

THE COURT: Okay. So, Mr. DelConte, as I said, you submitted a declaration in connection with these matters on October 22, 2021. Sitting here today, November 9th, knowing that it would be your direct testimony, is there anything in it that you wish to change?

MR. DELCONTE: No, sir.

THE COURT: Okay. Does anyone want to cross-examine Mr. DelConte on his declaration? And again, I've limited that declaration to the extent that I ruled so in the colloquy with Mr. Goldman. Okay. Mr. DelConte, I had a question for you. Do you have your declaration there?

MR. DELCONTE: I do.

THE COURT: Okay. In your declaration, you discuss the timing of payments under the plan and describe them in Paragraphs 7 through 9 and 12 through 21, and also payments to fund the NewCo under the plan in Paragraph 22. And then in Paragraph 26, 27 and 28, you do that present value calculation based on your assessment of the delay in distributions that would result from a stay of three months through 6, 9, 12, 18 and 24 months. Do you see that there?

MR. DELCONTE: Yes, I do.

THE COURT: Okay. My question is, assume for the moment a stay through the date of a ruling by the District Court of the effective date of the plan, and then tack on 14 days to that. So assume that would be sometime, let's just say, in the third or fourth week of December. Obviously, I'm making a prediction on how the District Court might rule. The court might rule later than that; might rule earlier than that. When you say three months, what are you tracking off of as the effective date?

MR. DELCONTE: I'm tracking off of the end of the year, which a good proxy for when, you know, I think the earliest that we could potentially emerge would be. So a three-month delay in this case would be delaying emergence from December 31st to the end of March.

THE COURT: Okay. And --

MR. DELCONTE: 2022.

THE COURT: I got it. And the distributions that would be -- that you track as coming in on the effective date for that period, are any of those distributions to the end-users of the money, or are those distributions to the trust and to NewCo?

MR. DELCONTE: Yeah, those distributions that we're tracking, and these are the distributions to -- both the Federal government and the creditors are in public

trusts. Those are just the timing of those payments --

THE COURT: So there would be a distribution to the Federal government --

MR. DELCONTE: -- to those trusts, not -- we haven't taken into account any -- yeah, I mean, there's the $225 million payment to DOJ and there's a $25 million payment to other Federal entities, in addition to the trusts; $600-some-odd million would be distributed to the creditor of the public trusts. And we're tracking the payments to those trusts. We haven't done anything to take into account payments from those trusts ultimately to the end-users.

THE COURT: Okay. All right. Then is there some amount that would also go to fund NewCo, or is that just there already, in essence?

MR. DELCONTE: Yeah, I mean, that money is currently sitting at OldCo or PPLP, and at emergence, $200 million of that would go to NewCo. As far as the harms that we've looked at here, we've only been looking at harm as it relates to the distributions that would ultimately go to either the Federal government or the various trusts. We haven't taken into account anything that the (sound drops) distributed to NewCo.

THE COURT: Okay. All right. Those are my only questions. Thank you. I don't know if you have any

redirect on that, Mr. Kaminetzky? No?

MR. KAMINETZKY: I do not, Your Honor. Sorry.

THE COURT: Okay. Your testimony is complete, Mr. DelConte. You can go off screen now.

MR. DELCONTE: Okay. Thank you very much.

(Declaration of Jesse DelConte Admitted Into Evidence)

MR. KAMINETZKY: Okay, Your Honor. Shall I proceed?

THE COURT: Yes.

MR. KAMINETZKY: Okay. Again, Benjamin Kaminetzky, of Davis Polk, for the Debtors. So, Your Honor, I'm going to take your guidance, of course, and at first I'll focus on what we'll call the short-term period between, let's call it, now and the District Court's ruling.

And Your Honor, what we've done is we've provided and have been willing to provide complete protection to the movants against all risk of equitable mootness in the near term, which would allow for Judge McMahon to decide the pending appeals on the merits and would have eliminated the need for today's hearing, but we're already here. And all that we ask for is an escape hatch for the movants to renotice the motion in a proper forum if there's any risk that mootness were to arise in the future in a situation that we quite frankly don't expect to happen.

And this is exactly what Your Honor suggested we do, which was to try to "hit the sweet spot," based on a reasonable prediction of when the District Court might rule. So let's be crystal clear on where we are right now and what it is that the movants have refused to accept.

The Debtors and the other plan proponents have now made the following six unilateral concessions in writing, signed, which provides everything the movants can get out of this hearing. Now, Your Honor noted that the movants need to show harm, not just conjecture -- I wrote those words down -- but we have eliminated even conjecture. What do I mean by that?

Every single party that intends to present arguments or evidence to the District Court on appeal. That includes the Debtors, the UCC, the AHC, the MSGE, the NAS group. Both sides of the Sackler Family have stipulated in writing to you, to the District Court, that they will never argue before any court that the appeals of the confirmation orders have been rendered equitably moot by the actions taken in advance of the effective date in furtherance of the plan, pursuant to both the confirmation order and the advance order. Okay?

This agreement is set forth in stipulation and was filed on October 20th on the District Court's docket. The Debtors have agreed that the effective date will not occur

until the earlier of seven days following a decision by the District Court on the appeals and December 30th. In addition, Sir, the Debtors have the --

THE COURT: Can I --

MR. KAMINETZKY: Sorry.

THE COURT: Can I just stop you there? So, on the stipulation, the movants have said that you've carved out arguing equitable mootness with respect to the sentencing and its effects.

MR. KAMINETZKY: Yes. And that's -- we test in the next point, Your Honor.

THE COURT: Okay.

MR. KAMINETZKY: We have agreed that we will not request that the criminal sentencing take place before December 20th. Now, under the plan, as Your Honor knows, the sentencing hearing could otherwise occur as of December 1st. But let's just pause for a second on that, just so it's clear.

The plea and sentencing is pursuant to a separate agreement with the DOJ, not the plan and confirmation. There was some confusion about that, but that's not something that's addressed under the plan. That's something we agreed to to the DOJ. But lest you think we're hiding anything, we've also agreed that we'll file a notice on the docket -- and obviously, it will be on the New Jersey

court's docket -- when the criminal sentencing hearing is scheduled.

And lest you think we're hiding anything and not being transparent, the sentencing hearing has not been scheduled, and suffice it to say that scheduling a sentencing hearing in a U.S. District Court can take several weeks. And we haven't asked -- we haven't reached out yet to schedule that sentencing hearing.

So isn't something that could happen in the dead of night without any notice. This is a sentencing hearing in a very public case. There'll be plenty of notice. And we've agreed already in writing that the earliest it possibly could occur is December 20th. But again, that date -- we haven't even reached out to obtain a sentencing date. And when I say we, I mean we and/or the DOJ.

THE COURT: Well --

MR. KAMINETZKY: Okay. So that's number --

THE COURT: Okay. Why don't --

MR. KAMINETZKY: -- four. The --

THE COURT: Why don't you go through all the points, and I'll come back to questions I have.

MR. KAMINETZKY: Okay, good. Number four, the Debtors will provide no less than 14-days' notice of the actual effective date. And that was something Judge McMahon asked us to do, and we obviously have agreed to do it. I

already talked about that we'll file on the docket when the criminal sentencing has been scheduled.

And finally, the plan opponents agree that the movants may renew their stay motions or file a new motion as of the earlier of the District Court's decision on appeal and December 15th.

So these concessions provide the movants complete protection from the risk of equitable mootness until December 20th at the earliest and would either allow the District Court to decide the appeals on the merits, or if contrary to everyone's expectation, Judge McMahon's ruling is delayed, tee up the stay motions at a later point in time, before any risk of mootness becomes imminent.

We've built everything in so that the two things that could possibly render -- you know, arguably render anything equitably moot, we've built into the stipulation that we've provided, protection that they could come back to court and make any -- renew this motion.

So there's literally -- I mean, the only harm that they could articulate --

THE COURT: Well --

MR. KAMINETZKY: -- in the short-term stay or in the short-term period is the equitable mootness, and we have taken it off the table.

THE COURT: So could I explore that for a minute

or two?

MR. KAMINETZKY: Please.

THE COURT: I expect you heard me initially having some doubt as to how the sentencing, when it occurs, arguably give rise to equitable mootness. And I was told one thing, and perhaps two. First I was told that if the sentencing occurs, there will be tremendous pressure to go effective at that point, because the Debtors, as opposed to NewCo, which only exists under the plan if the plan goes effective, would not be able to continue on in their business. What is your response to that?

MR. KAMINETZKY: That might very well be the case.

THE COURT: Okay.

MR. KAMINETZKY: That the -- again, it's not necessarily two seconds later, but there's certainly a risk of that.

THE COURT: Well, how --

MR. KAMINETZKY: And that is why we're not --

THE COURT: How soon afterwards does that happen?

MR. KAMINETZKY: Well, I'm not sure. I don't think it's necessarily up to us.

THE COURT: Okay.

MR. KAMINETZKY: I'm not the expert in this area. But I'm not here to argue that the sentencing isn't a very big deal. I'm here saying that there's no risk that that

could happen under the stipulation that we've provided, or are willing to provide, or have provided to the other side without giving them an opportunity to come back and get a stay, if necessary.

Obviously, if we're in that position and Judge McMahon hasn't ruled yet, we'll take that into account and most likely extend that date. We're not --

THE COURT: Well --

MR. KAMINETZKY: -- here trying --

THE COURT: I'm sorry. What is the harm to the Debtors and the other Appellees of delaying the sentencing, or having the Debtors request a sentencing hearing date that would be, say, at the end of December? Is there some difference between December 20 and December 31, or...?

MR. KAMINETZKY: No, there's no -- if you want another 10 -- put it to December 31, we're happy to do this. The issue here, Your Honor, is we all are expecting -- and if you were at Judge McMahon's hearing, we heard it -- she put this -- what she called a "rocket docket." We all expect her to rule promptly.

The only risk we are protecting -- you know, why can't I just get up and say we'll give them -- you know, we'll stipulate until Judge McMahon's ruling. In all likely circumstances, that's what we're doing. We just feel as fiduciaries, you know, who knows what could happen. So we

want some outside date that if Judge McMahon, for whatever reason, doesn't rule by then, we could come back to you or, you know, we could see where we are.

We just can't right now say, you know, we'll wait until Judge McMahon's ruling. Although, you know, that's where we all expect to be. Judge McMahon, again, she's scheduled oral arguments November 30th. Right after doing that, she said, "And I have a criminal trial starting on December 7th." The implication of that, I thought, was that she's going to try to rule very promptly. And that's why we've set the dates the way they are, December 20th, December 30th.

But, you know, those are all -- and that's why we just want the back-up drop-dead date. But again, we all expect -- and the purpose of the stipulation is to give them comfort that nothing will happen until Judge McMahon rules, both the effective date and the sentencing.

THE COURT: So, can we --

MR. KAMINETZKY: And once we've -- Your Honor, this is -- I'm sorry.

THE COURT: The proposal is, as you've repeated just now, that the agreement is that the effective date would not occur until the earlier of the District Court's ruling or December 30, which places the onus on the movants to seek a ruling within the 14-day notice period that you've

agreed to, assuming that a ruling isn't forthcoming by December 30, right? That's really what you --

MR. KAMINETZKY: Right, that's --

THE COURT: That's what you're suggesting.

MR. KAMINETZKY: Yes, because -- and again, the burden is on -- let's just -- I'm not asking for a favor, Your Honor.

THE COURT: Right.

MR. KAMINETZKY: The burden is on them. Like, a stay isn't the natural state of being. A stay is extraordinary, and they have a burden. Their only burden, the only harm that they could talk about -- and again, we're limiting this to the interim period as equitable mootness. We have taken it off the table until, you know, Judge McMahon rules, for all intents and purposes. We think we're done, then.

And again, if there's an issue or, the only thing that we've added is a -- you know, let's say something happens and Judge McMahon doesn't rule, yes, the burden would be on them. But that's fair because we don't expect that to happen and they can't -- sitting here today, they can't meet their burden.

First of all, equitable mootness alone shouldn't count. But even assuming it does, and even -- and we heard Your Honor loud and clear, that Your Honor wants meaningful

appellate review. So do I. We've given them meaningful appellate review until Judge McMahon rules.

And at that point in time, Your Honor -- and I could go through the case law; Your Honor already did it -- basically, that's all you could give them at this hearing, because under the vast majority of rule, with the exception of a single case that the U.S. Trustee found, is that Your Honor's kind of jurisdiction, or Your Honor's ability to impose a stay, or Your Honor's stay dissolves after the District Court rules.

So we're giving them, with one exception, until Judge McMahon rules. With the safety valve that the Debtors need and as plan fiduciary needs, is if something goes sideways and for some reason Judge McMahon hasn't ruled, we could come back to you at that time.

THE COURT: Are there other actions...? Let's say I just stayed the effective date and not the plan itself -- I mean, the confirmation order itself; I stayed one of the conditions to the effective date, which would -- until the District Court ruled or December 30, whatever was earlier -- are there steps that would involve either -- let me just turn to the applicable section -- the transfer of material assets under the plan or distributions to creditors before then --

MR. KAMINETZKY: No, no, no.

THE COURT: -- i.e. substantial consummation?

MR. KAMINETZKY: No, no and no. What we're doing now, as we've always said, we're setting up trusts, paying professionals, seeking regulatory approvals. There's no transfer of assets until the effective date. We're setting up for that effective date when the transfers actually occur. That's why it was giving ice in winter to say that -- you know, for us to make clear and stipulate again and again and again that we won't make any equitable mootness argument with respect to any actions pursuant to advance this order pertaining to the confirmation order, you know, with a sentencing that we talked about otherwise.

THE COURT: And --

MR. KAMINETZKY: So the answer is --

THE COURT: And that's all part of you and the Other Appellees' stipulation, that those sorts of things --

MR. KAMINETZKY: Stipulated to it --

THE COURT: Would not --

MR. KAMINETZKY: -- filed it on the docket.

THE COURT: You would not argue equitable mootness based on those sorts of things?

MR. KAMINETZKY: Absolutely. That's black and white. We've said it. It's filed upon the docket in the District Court, and we sent a signed version of it to the other side as well and to Your Honor.

Again, Your Honor, it may be a -- for us, it's an important point. If we remove the equitable mootness risk, which is the only risk or the only harm that they've identified, they are not entitled even to the short-term stay, period. And we've done that.

And we've taken into account anything that they've identified, including, obviously, the effective date and the sentencing, by giving them comfort that we won't seek sentencing before December 20th. If you want us to move that to December 31st, we're happy to do that as well.

But again, we don't control the sentencing. The District Court does. All we can say is we won't seek to schedule it until then. But again, all that we're looking for is some sort of safety valve that we think won't be necessary, because we think Judge McMahon is -- she's indicated that she realizes how exigent this is.

THE COURT: So I just want to make sure. Originally, I think you said that you would request that the current sentencing will not take place before December 8, but then you said December 20.

MR. KAMINETZKY: No, it's December -- we've agreed not to... I'm sorry. We've agreed not to seek to have the sentencing hearing occur before December 20th. That's in the current stipulation that we had sent over.

THE COURT: Okay. And --

MR. KAMINETZKY: December 8th was the earliest. Just the dates are a little -- December 1st was the --

THE COURT: That was the earliest that it could happen.

MR. KAMINETZKY: It could happen. Exactly. As opposed to -- but this in a further agreement. But we're happy to -- there's nothing written in stone about December (indiscernible). But all we're trying to do is give Judge McMahon time that she needs to rule without any risk of equitable mootness between now and then. And once we've done that, they have what they need, all the harm that they've identified has been dealt with, and we should be done. It's really as simple as that.

THE COURT: Okay. Well, why don't I hear from counsel for the U.S. Trustee on this point.

MR. KAMINETZKY: Okay. All right. I'll be back.

MS. LEVINE: Your Honor, my video takes just a second.

THE COURT: No, that's fine, Ms. Levine.

MS. LEVINE: I'll go ahead and start. I don't know what's going on with my video. It'll come up soon.

But, Your Honor, I think what I've heard is that there is an agreement that there should not be equitable mootness, at least before the District Court rules. And where there is a difference of opinion is what would cause

that to happen. And you know, with respect to the stipulation that they've sent, it's really unclear to us. You know, that was an offer that they had sent, which we did not agree to for various reasons, including that it purported to limit our ability to seek stay relief.

And we're, again -- you the concern here is sentencing, which as you've heard, they do intend to argue sentencing will constitute equitable mootness, and we don't know what -- they've offered to have that, I guess, as early -- no earlier than December 20th. That's part of the stipulation, but it's attached to conditions that would limit when we could seek further state relief. That would prevent us from going back to court until December 15th, just five days before then.

THE COURT: Well, let's say it's December 30th instead, so you have a full 14 days.

MS. LEVINE: Your Honor, we were willing to discuss a stipulation in the context of trying to get to a consensual resolution --

THE COURT: No, no. I'm just --

MS. LEVINE: -- and we weren't --

THE COURT: -- focusing on the merits. I'm trying to figure out what's the harm in that, in what has just been proposed with the change that the sentencing also would occur no earlier than December 30. So you pretty much know

that the 14 days to renew the stay motion would be in mid-December, if there hasn't been a ruling by them. And you'd tea that up before the 30th.

MS. LEVINE: Your Honor, our concern is twofold. You know, one is making sure that we get a ruling before that day comes, with plenty of time to seek a further stay. You know, I know you disagree about this, but we do have concerns about the other activities that are going on. And the only way to ensure that someone doesn't come in and say those other activities don't cause equitable mootness is a stay. And the only sure way to ensure that they're not going to request a sentencing date that then ends up falling before a ruling by the District Court is a stay of the confirmation order. That's the only sure way we know of.

THE COURT: I don’t understand -- I guess --

MS. LEVINE: And the --

THE COURT: You're saying because there's an outside date for the effective date, which would be December 30 in the proposal, right?

MS. LEVINE: Well, it's the sentencing, Your Honor, that they say that they're going to --

THE COURT: Well, both dates. But December 30 could be a date before the District Court rules.

MS. LEVINE: It could be, yes. And that would undermine sort of the whole project, which is to make sure

we're getting a ruling before there is --

THE COURT: But the U.S. Trustee was making emergency motions for a stay while I was still on the bench ruling on the plan. The U.S. Trustee is perfectly capable of making this motion. In fact, it's already done so, and we've already had a hearing on it. So it wouldn't seem to me that hard when you have 14-days' notice to do it.

MS. LEVINE: We certainly could go back to the Court if we have to go back to the Court, Your Honor. We don't see the harm in entering the stay now, though, to prevent that additional motion practice, which will cost everyone resources, you know, particularly if the stay is less than what we are asking for, but is just through the date of the District Court decision.

THE COURT: That's all you're going to get.

MS. LEVINE: You know, that --

THE COURT: You're not going to get any more than that, Ms. Levine. So I don't think you should worry about giving up anything on this point.

MS. LEVINE: I got that impression, Your Honor.

THE COURT: Okay.

MS. LEVINE: So, you know, what we're talking about balancing is, you know, that short amount of time, that short amount of delay, to ensure that the District Court is able to rule on the merits, which I think --

THE COURT: All right. So let me just ask Mr. --

MS. LEVINE: -- everybody agrees on this is something that should happen.

THE COURT: -- Mr. Kaminetzky. Your concern is really just if something happens that is unexpected, that delays Judge McMahon from ruling, right? I mean, that's really why you've put this earlier of District Court ruling or December 30, right?

MR. KAMINETZKY: Exactly. We did --

THE COURT: So --

MR. KAMINETZKY: -- I mean, again --

THE COURT: I mean, if that happens -- I mean, I don't what it would be. Maybe, you know... I don't know what happens. But I think what Ms. Levine is saying is why can't the Debtors come back to me and say it's a port for us to have the effective date go forward now?

MR. KAMINETZKY: The answer is, Your Honor, just that's not what the law is. The law --

THE COURT: Because it --

MR. KAMINETZKY: -- isn't that --

THE COURT: It would shift the burden. You're saying it would shift the burden.

MR. KAMINETZKY: It shifts the burden. Yeah, the burden is on them to show -- and I'm now quoting from the Calpine case, how it has to be neither remote nor

speculative, but actual and imminent. There is no harm.

THE COURT: Okay.

MR. KAMINETZKY: The only harm they've articulated is equitable mootness, and we've taken that off the table. They are not entitled to a stay. We've written it in blood seven or eight times that we've eliminated any risk to them. And if the unexpected happens, I'm fine with -- you know, December 15th they could file their new motion. We'll wait until December -- the earliest sentencing date is December 31st, which means that the effective date -- the earliest one has to be seven days later. They have all the time in the world if the risk becomes actual and imminent. But it isn't, because we've agreed to take that off the table.

THE COURT: So when -- I'm just trying to figure out how the 14-days' notice of the effective date would tie into a December 30 sentencing date and a December 30 end date to the voluntary stay. When would you give that notice?

I guess you'd get -- can I interrupt you? I guess what you would do -- correct me if I'm wrong -- is you would fairly soon, I suppose, reach out to the District Court in New Jersey and say, can you give us a sentencing hearing sometime between December 30 and the next available date thereafter. Right? So you know when that would be? And then you would -- then you would --

MR. KAMINETZKY: Yes, Your Honor. We can't --
THE COURT: And then you would say in your --
MR. KAMINETZKY: We can't go --
THE COURT: Then you would say in your notice, we're giving you more than 14-days' notice. We're giving you a notice that we plan to go effective whatever date is after that sentencing hearing that you have to go effective? Or would it be the date of the sentencing hearing?
MR. KAMINETZKY: Well, it's both, Your Honor. We would give them notice of the sentencing hearing when it's scheduled. And obviously, it hasn't been scheduled yet. So, you know -- and Your Honor knows how busy District Courts are. So we'd give them immediate notice of that. They'll then know for sure that we can't go effective until after that date. The earliest is seven days after that date under the plan. And then they have plenty of notice of both the sentencing hearing, which won't happen overnight, as well as the effective date that will happen there after.
THE COURT: So is the sentencing hearing date, though, the key date, because the puzzle really does arguably change -- that's the missing piece of the puzzle as far as mootness is concerned? So really, the notice of the effective date is less important than the noticing of the sentence date?
MR. KAMINETZKY: Correct. And I mean, perhaps,

yes, maybe perhaps, but the answer is they're going to have plenty of notice of the sentencing date. And there's a reason we're not playing games, Your Honor. We're not ready to be sentenced yet. We still have work to do that's --

THE COURT: Right. Well, so --

MR. KAMINETZKY: -- you know, to get ready for this --

THE COURT: So I could require that you provide not only 14-days' notice of the actual effective date, but also 14-days' notice of the sentencing date.

MR. KAMINETZKY: I have no problem with that. I mean, again, it's in the District Court's discretion. But like --

THE COURT: No, I mean -- but I --

MR. KAMINETZKY: -- no problem here.

THE COURT: I'm assuming the District Court will give you at least 14-days' notice, right?

MR. KAMINETZKY: I certainly expect that to be the case. I think it would be quite -- in a public case like this, for a company like Purdue to be sentenced, I assume the District Court will give plenty of notice to everyone, including the public. So there's nothing happening here in secret. This isn't the type of, you know, equitable mootness that you're scared that wires will be sent out in the middle of the night. This is the most public events

that you could imagine is the sentencing of Purdue Pharma in a United States District Court.

And again, Your Honor, we're happy to -- I can repeat this -- we're all thinking -- you know, we all think that Judge McMahon, when she indicated in reading between the lines that she's going to rule quickly, so setting December 30th and January 7th is really not a problem. We just feel we need the protection of some outside date, just in case who knows what.

THE COURT: Okay. All right.

MR. KAMINETZKY: And Your Honor, Ms. Levine came back to these, you know, mysterious other things that are happening. But we've already dealt with those mysterious other things that are happening. How many times does Your Honor have to rule that there's just simply no equitable mootness possibility there? And again, we've stipulated it, and every plan proponent has stipulated that we will never, ever, ever make the argument that that would be to equitable mootness, any of those activities.

THE COURT: Okay. All right. Does any other movant have anything to say on these points? Any other stay movant?

MR. GOLD: Your Honor, Matthew Gold. Can you hear me?

THE COURT: Yes.

MR. GOLD: Just a couple of brief observations, Your Honor. The first is it seems to me, given the construct of the Debtors' (indiscernible) that there would be no additional burden on the Debtor, and it would make perfect sense for them to provide us with substantially immediate notice a time when a request is made of the District Court for sentencing to occur, rather than saying send a date and -- I mean, if they're making a request to the District Court, they should be able to tell everyone that they have done so right then and there, or substantially (sound drops) thereafter, regardless of when that occurs.

The second thing is that I still find in the Debtors' proposal a subtle rewriting of Rule 8025, which Your Honor discussed earlier, which provides for a two-week stay following the ruling of the District Court, rather than --

THE COURT: That still applies. That still applies. This is just -- this just takes you up to the District Court ruling.

MR. GOLD: I understand. I just... It just seems, to us, cleanest when not creating confusion to say that whatever Your Honor grants would be coterminous with the stay that comes from under Rule 8025, rather than having to have anyone puzzle out what happens if one stay applies -

- ends earlier, and another stay does not.

THE COURT: Well, to me, the way to do that is to say it's... First of all, the Debtors are not proposing a stay here. They're proposing a stipulation that would obviate the need for a stay. And that at that point, you know, you have the District Court ruling. And then 8025 comes into play.

MR. GOLD: Okay. Well, the Debtors' stipulation did not contain anything that said that it was not -- it was possible we were concerned in reading it that it might be intended to be a derogation of whatever rights --

THE COURT: No.

MR. GOLD: -- under 8025 --

THE COURT: I understand, but I don't --

MR. GOLD: -- and not --

THE COURT: Well, no one even mentioned 8025, but I understand that point. But I think that that would be clear from my ruling here.

MR. GOLD: Okay. And Your Honor, I mean, the only other thing which I will suggest is it's hard for me to believe that anyone wants to be deliberately setting a deadline that runs to New Years Eve, or immediately, giving a few days after that, if parties are going to be having to run in for emergency applications would make a certain amount of sense, given that the Debtors have conceded that a

few days here or there is not going to make a meaningful difference in this context.

Other than that, I have nothing to add on this point, Your Honor.

THE COURT: Okay.

MR. GOLDMAN: Your Honor, may I just add one additional point? Irv Goldman, Pullman & Comley, for the State of Connecticut.

THE COURT: Sure.

MR. GOLDMAN: I think Your Honor hit directly on the head that the important date here, especially if the District Court has ruled by December 30, is the criminal sentencing date. Although they've agreed to postpone asking for that to be held to December 30 or December 31, if it does actually fall on that date, I think it does make it -- and this follows up on Mr. Gold's point -- somewhat of a difficulty in trying to get an emergency stay motion over the holiday season, running up to December 30th. So I think it does, for that reason, make (sound drops) sense to have that pushed out so we're not running into the holidays.

THE COURT: Well, I'm assuming you would make it - - you would file it and get a date a couple weeks before then. But I understand the hearing time. Understand that point, I don't think any court is particularly excited to have a hearing, although I think it would probably be

shorter than this one, on the New Year's Eve.

MR. GOLDMAN: Yes. That's all I had, Your Honor.

THE COURT: Okay. All right. Okay, so, look, I think obviously there is a lot more that the objectors want to get in the record for this hearing. But I do think that the Debtors' proposal, with some tweaking, really does make a lot of sense in the interim, particularly given Mr. DelConte's testimony that the money itself wouldn't be flowing even to the trusts until the beginning of 2022, and wouldn't thereafter, at least for a while, be going out -- at least for a couple of weeks -- be going out to third parties in the form of the abatement payments. And probably a little bit longer for the personal injury claimants, which is the offsetting harm that the objectors have highlighted, and rightfully so.

So, why don't I throw out -- and people can be thinking about this while I hear the rest of the argument -- that the Court's ruling would be to deny the stay request, on the conditions that the effective date not occur until the earlier of the issuance of the District Court's ruling and January 7th. That the Debtors will not seek a sentencing hearing to occur any earlier than January 7th, and that they will provide notice, not only of when that hearing is scheduled, but also their request for one to the Appellants. And that the movants may renew their stay

motion on at least 14-days' notice. And of course, that would also be accompanied by the stipulation that's been signed that the Appellees will not argue that any of the other actions that would be taken leading up to either the District Court ruling or January 7 would serve as a basis for equitable mootness.

So you all can mull that over, but I don't know if you want to go into additional argument, Mr. Kaminetzky, or does that conclude your argument? In which case, I'll hear from the other objectants. I think you're on mute still.

MR. KAMINETZKY: I am on mute. I have a double mute because I don't trust just one mute. But here's -- well, Your Honor, we have -- if Your Honor wants me to address the longer stay, if that's still on the table, then I have a lot to say about that in terms of irreparable harm and the other prongs. If not, then I'll save that for, hopefully, never. But it's really up to you.

We do have a -- you know, we have a lot to say on the three-hour argument that the other side had on irreparable harm and the balances of harms and public policy and bond and all of that. So, Your Honor, I don't want to do something that you're not -- you don't want us to do, but we're happy to make that record or not make that record.

THE COURT: Well, unfortunately, where I know where I'm coming out, at least some of the movants, not all

of them, really are, I think, still actively pursuing as an alternative the stay through the conclusion of the appellate process. So I think we should, albeit maybe so as to preserve the record, at least get in the witness declarations and hear brief argument on the irreparable harm and balance of the harms and public policy points for, or with respect to, movants' request for a stay beyond the dates that I have posited, which again would be the earlier to occur of the District Court's ruling and January 7th, although that wouldn't be a stay. That would be a denial of the motion on the conditions that these agreements be made by the Appellees.

MR. WAGNER: Your Honor, Jonathan Wagner, from Kramer Levin, on the issue of the declarants -- on behalf of the Ad Hoc Committee. Our declarant, Mr. Guard, has to leave by 4:00 --

THE COURT: Okay.

MR. WAGNER: -- to pick up his son.

THE COURT: Okay.

MR. WAGNER: So can we swear him in now and have him attest to his declaration?

THE COURT: Yes, that's fine.

MR. WAGNER: That's fine.

THE COURT: And I see him there on the screen. So, Mr. Guard, would you raise your right hand, please? Do

you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

MR. GUARD: I do.

THE COURT: Thank you. And it's John M. G-U-A-R-D?

MR. GUARD: Yes, sir.

THE COURT: Okay. So, Mr. Guard, you submitted a declaration intended to be your direct testimony on these motions for stay pending appeal. It's dated October 22, 2021. Knowing again that it would be your direct testimony, is there anything in it sitting here on November 9 that you want to change?

MR. GUARD: No, Your Honor.

THE COURT: Okay. Does anyone want to cross-examine Mr. Guard? Okay. I have reviewed Mr. Guard's declaration. I believe it's quite clear. I have, in part, limited it, as I ruled in my colloquy with Mr. Goldman, in light of Connecticut and Washington's objection to its admissibility. But otherwise, I'll admit it now. It's just direct testimony. So, you can sign off, Mr. Guard.

MR. GUARD: Thank you, Your Honor.

THE COURT: Okay.

(Declaration of John M. Guard Admitted Into Evidence)

THE COURT: I think other objectors also submitted

declarations that they may want to move the admission of now. Mr. Jorgensen and the Committee's two witnesses, Ms. Juaire and Ms. Trainor.

MR. HURLEY: Your Honor, if I may, it's Mitch Hurley, on behalf of the Official Committee of Unsecured Creditors.

THE COURT: Okay.

MR. HURLEY: Your Honor, my colleague, Arik Preis, is going to argue the objection to the stay motion on behalf of the UCC. I'm taking the virtual podium here only to offer into evidence the declarations of Ms. Juaire and Ms. Trainor.

Both witnesses are members of the UCC, who have dedicated countless uncompensated hours to these cases. Both agreed during the course of the cases to cease their ordinarily outspoken public advocacy relating to Purdue. Both have suffered unthinkable personal loss as a result of the opioid epidemic. And both have responded by devoting virtually all of their time helping others (indiscernible) community.

As such, the ICC submits these witnesses have unique knowledge and insights in matters of great relevance to the exercise the Court is undertaking on the stay motion, and that those insights should be a part of the record.

The states of Washington and Connecticut were

alone in objecting to admission of the declarations of Ms. Juaire and Ms. Trainor, and then only with respect to several discrete statements included in those declarations.

My understanding is that the Court already has overruled the objections of Washington and Connecticut, as explained in more detail by the Court earlier in these proceedings today. And I therefore will not address further those objections, unless Your Honor has questions for me. And both of the witnesses are present and available to affirm their declarations, if Your Honor wishes.

THE COURT: Just to be clear, I didn't completely overrule the two states' objections. I granted them to the extent that I found that each declarant was predicting or offering a rationale for the exact effect of the delay of payments under the plan and/or stating their belief as to why certain sources of abatement have shut down over the last several months.

I admit them for predictions by a reasonably informed person who has dedicated, as you said, substantially all of their time to these types of issues, and who have in each case involved them to a significant degree in understanding and interacting with others like them, who have devoted themselves as well to abatement of the opioid crisis.

So, why don't we start with Ms. Juaire? She can

go on the screen. Okay. Would you raise your right hand, please? Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

MS. JUAIRE: I do.

THE COURT: And it's Cheryl, C-H-E-R-Y-L, Juaire, J-U-A-I-R-E?

MS. JUAIRE: Yes.

THE COURT: Okay. Ms. Juaire, you submitted a declaration in connections with these motions for a stay pending appeal that was intended to be your direct testimony. It's dated October 21, 2021. Sitting here today on November 9, is there anything in it that you would wish to change?

MS. JUAIRE: No.

THE COURT: Okay. Does anyone want to cross-examine Ms. Juaire? Okay.

I have read the declaration and I don't have any questions on it. It's quite clear to me, and I will admit it as Ms. Juaire's direct testimony subject to the limitation on admission that I previously articulated.

So thank you, Ms. Juaire, and you can sign off at this point.

MS. JUAIRE: Thank you.

THE COURT: Okay. And then can we bring Ms. Trainor on the screen? Good afternoon. Would you raise

your right hand, please? Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

MS. TRAINOR: I do.

THE COURT: Okay. And it's K-A-R-A T-R-A-I-N-O-R?

MS. TRAINOR: Yes.

THE COURT: And Ms. Trainor, you submitted a declaration in connection with this set of motions for a stay pending appeal. It's dated October 21, 2021, and it's intended to be your direct testimony.

Sitting here today on November 9, is there anything in it that you wish to change?

MS. TRAINOR: No.

THE COURT: Okay. Does anyone want to cross-examine Ms. Trainor on her declaration? Okay.

And again, I've reviewed it and I found it to be quite clear and subject to the limitation on admissibility that I previously noted, I will admit it as Ms. Trainor's direct testimony. I don't have any questions of her, so thank you and you can sign off, ma'am.

MS. TRAINOR: Thank you.

THE COURT: Okay.

MAN 1: Thank you, Your Honor.

THE COURT: Okay. I think there were two other declarations, one by Mr. Jorgensen and then one that came

out very recently, which may or may not be necessary given my ruling on the objections to admissibility by the State of Connecticut and the State of Washington, but I think that's Mr. Jorgensen. And a declaration by another official from Arkansas, which I'm looking for and can't find at the moment -- here it is, I have it -- Mr. Lane.

MR. LIESEMER: Yes, Your Honor. This is Jeffrey Liesemer on behalf of the multi-state governmental entities group. We had filed the declaration of Mr. Jorgensen, and if we could proceed, I can see if we can bring him up.

THE COURT: Yes. If you could pull him on the screen, that'd be fine.

MR. LIESEMER: And while we are waiting for Mr. Jorgensen to appear, I just did want to remind Your Honor that Washington and Connecticut had raised certain evidentiary objections to the declaration of Mr. Jorgensen, similar to the other declarants.

And we filed the declaration of Mr. Kirk Lane yesterday to respond to the narrow point that was raised by the two states, and Mr. Lane's declaration is at Docket 4075.

THE COURT: Okay, right. I have it here now. Okay. I see Mr. Jorgensen now. Would you raise your right hand, please? Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

MR. JORGENSEN: I do.

THE COURT: And it's Colin, C-O-L-I-N, Jorgensen, J-O-R-G-E-N-S-E-N?

MR. JORGENSEN: Yes, Your Honor.

THE COURT: Okay. So, Mr. Jorgensen, you submitted in connection with the motions for stay pending appeal. It's dated October 20, 2021. It's intended to be your direct testimony in support of the multi-state governmental entities group in opposition to those motions.

Knowing that and sitting here today on November 9th, is there anything in it that you would wish to change?

MR. JORGENSEN: One thing, Your Honor, an update.

THE COURT: Okay.

MR. JORGENSEN: In Paragraph 12 on Page 5-6 of my affidavit, I cite the number 515 drug overdose deaths in Arkansas for 2020.

THE COURT: Right.

MR. JORGENSEN: And since I wrote and signed the declaration, I've learned that the updated final number is 547 overdose deaths in Arkansas in 2020.

THE COURT: Okay.

MR. JORGENSEN: I can source that for you if you want.

THE COURT: I think you should do that for you, yes.

MR. JORGENSEN: Okay. So I found that number on the Arkansas Drug Director's website, which is artakeback.org. There's a news button you can push. And when you go into that, it's the most recent post on the website is from October 28th, just less than two weeks ago, and that article, the last sentence in that articles cites the number 547 drug overdose deaths in Arkansas in 2020.

When I saw that, I knew that must mean they have arrived at a final number, and I reached out to Kirk Lane, who is the Arkansas Drug Director, and I asked him to source that for me. And he sent me several reports from the Arkansas Department of Health, which maintains these final numbers and death certificates and things.

And I reviewed the reports and saw that they consistently all cited the number 547 as the number for overdose deaths in Arkansas in 2020.

THE COURT: Okay.

MR. JORGENSEN: It doesn't change much in substance for my affidavit. It's just the more accurate number now with that update.

THE COURT: Okay, thank you. Does anyone want to cross-examine Mr. Jorgensen on his declaration? Okay.

Again, I've reviewed his declaration carefully. It, like other declarations that I've already admitted into evidence, cites the CDC estimates for drug overdose deaths

in 2020, and also as we've just heard, focuses on the State of Arkansas for that sad statistic.

I will admit Mr. Jorgensen's declaration, subject to admitting Mr. Lane's declaration, and the limitations generally as to any assumptions as to other parties' actions that would derive from third parties as being only Mr. Jorgensen's analysis or prediction.

But I will note that his task here, I believe, qualifies him to make such predictions and analyses, given his role on behalf of the AAC; that is the Association of Arkansas Counties.

So you can sign off Mr. Jorgensen.

MR. JORGENSEN: Thank you, Your Honor.

THE COURT: Okay. And then can we pull up Mr. Lane?

MR. LIESEMER: Your Honor, Mr. Lane's declaration goes to a very narrow point. Washington and Connecticut had asserted that the document that is attached to Mr. Jorgensen's declaration as Exhibit 1 did not fall under the public records exception to the rule against hearsay. We provide Mr. Lane's declaration to give assurance that it does meet the public records exception. And so, he's not speaking to any of the four prongs regarding the motion to stay, so it's a very narrow point.

If Your Honor does not need Mr. Lane's declaration

to admit all of Mr. Jorgensen's declaration, including the exhibit, then I think we can dispense with that. We do not, because of the narrow issue, we do not have Mr. Lane on standby.

THE COURT: Okay. All right, well, let me ask Mr. Goldman and Mr. Gold. Having seen Mr. Lane's declaration, would you still challenge the admission of the report that's attached as Exhibit 1 to his declaration, the Naloxone Saves Program report?

MR. GOLDMAN: Your Honor, Irv Goldman. No, no objection.

THE COURT: So I will admit Mr. Lane's declaration for that purpose.

Okay. I think those are all the witnesses, so I'm happy to go back now for brief oral argument by the objectants, although again, I've reviewed the pleadings.

MR. LIESEMER: Your Honor, I'll just be very brief and turn it over then to the other plan proponent objectors.

Let me just say two things: one is with respect to, you know, your tentative rulings or what have you. That's all fine, except for -- I'm just a civil litigator that plays in Bankruptcy Court from time to time.

I am told that Your Honor's suggestion or requirement that we provide notice of even a request for sentencing, that is something that perhaps we should not

agree to, given that this is an agreement between the U.S. Attorney's Office and the Debtors, and we're not sure how the U.S. Attorney's Office would feel about that; number one.

Number two. If we're talking about just a request for sentencing and not the sentencing date itself, we'll be getting in front of the U.S. District Court. I mean, if we're calling up the clerk of the court and asking for a sentencing date and that somehow triggers a requirement to tell the world that we've done so, that seems like kind of stepping on the toes of the New Jersey District Court.

And finally and most importantly, Your Honor, is I'm told that the sentencing schedule is going to be scheduled plenty in advance of any hearing, reporting likely, you know, 30-45 days. I can't guarantee because I don't have the judge's calendar. But this again isn't something that happens overnight; this is something that the public is going to be invited to.

So we believe that, you know, giving notice as soon as it's scheduled will give plenty of time for anyone to do whatever they feel they need to do to protect their rights.

THE COURT: Okay.

MR. LIESEMER: And then on the balance of harms, we'll rely on Mr. DelConte's declaration and the extensive

discussion of the cataclysmic harms that could occur to the Debtors should this thing delay the -- should confirmation be -- sorry -- emergence be delayed for any significant period of time.

But I will turn it over to the various creditors' group to make the principal argument with respect to the balance of harm, the public interest, as well as the bond issue.

THE COURT: Okay.

MR. PREIS: Good afternoon, Your Honor. This is Arik Preis from Akin Gump Strauss Hauer & Feld on behalf of the Official Committee. Can you hear me? Are there any issues?

THE COURT: I can hear you and see you fine.

MR. PREIS: Okay.

THE COURT: Although you seem to be inside a filing cabinet. I don't know, it looks -- I'm worried for you, but that's okay. Now I see you're in a conference room.

MR. PREIS: So I want to do this, if it's okay, I want to address my oral argument first and then, hopefully, that will inform my response to your proposal from a little while ago about how you would propose resolving the issue through a stipulation.

Can I proceed in that manner?

THE COURT: Sure.

MR. PREIS: Okay. And I'm going to, if I've hesitated, it's because I want to try to speak through some things, and so, it may take me a second to (sound glitch) over.

In general, obviously, the Official Committee vehemently opposed the movant's request. We actually spent quite a bit of time with them trying to avoid this hearing because we thought the offer we gave them gave them the functional (sound glitch) of what they were asking.

They insisted on having the hearing. And lest any of us forget, I won't belabor this, but during the course of this hearing, approximately 30 people have died due to opioid overdose. But notwithstanding our views regarding, you know, the impropriety of this hearing, we must do what we can to protect the interests of the 630,000 claimants who are waiting to receive their money, that roughly 96 percent of voting claimants who voted in support of the plan and then 10 ad hoc groups who all expressed support and objected to the stay motion.

So I'm going to pensively just address harm to the movants and then the public interest.

On harm to the movants, I'm not going to address equitable mootness; you addressed that already. The only real other argument that the movants made is that the three

state attorney generals argue that if a stay is not granted, their ability to enforce their police power will be irreparably harmed.

That's misguided for two reasons. First, it needs to be repeated that there's absolutely nothing, has been nothing, and will never be anything that stops anyone from criminally prosecuting any of the Debtors receiving the relief. Attorneys general and those that can bring the criminal prosecution has had this (sound glitch) for more than -- forever, and they've been investigating the Sacklers for more than three years, and they had the right to gain access to every piece of evidence the UCC and the NCSP uncovered in one of the most thorough investigations ever in the history of bankruptcy. If they thought they had a viable criminal case, they would have brought.

Instead, they've gone out of their way to confuse people, including their citizens, by blaming Your Honor for issuing an order that gives permanent immunity to the Sacklers, which they therefore cry -- used to cry irreparable harm.

General Tong ordered on September 20th that the Bankruptcy Court's ruling let the Sacklers off the hook by affording them permanent immunity from lawsuit that would hold them accountable for the damage they've caused.

General Ferguson in Washington ordered on

September 2nd, the confirmation order let the Sacklers off the hook by granting them permanent immunity from lawsuits in exchange for (sound glitch) profits they made from the opioid epidemic.

In fact, they well know that this is the creditors' plan. If the states and municipalities that drives the public (sound glitch), the NAS, the third-party payers, the ratepayers, the hospitals who all overwhelmingly voted in favor of the plan. They know this, but it's easier for them to blame Your Honor and this Court.

Second, it cannot be the case that these three AGs' ability to enforce (sound glitch) is irreparably harmed, while the ability of no other attorney general across the United States is similarly harmed. Indeed, we actually are forgetting that there are five other state attorneys generals who are vigorously appealing the confirmation order and the District of Columbia which have not joined in the request for a stay. They all looked at the facts and circumstances of the case and determined there's no irreparable harm to the citizens of their state if the plan is permitted to be effective without a stay.

Said another way, 94 percent of the AGs representing 95 percent of the population chose to follow the whim of 96 percent of the voters. So why is every single creditor, other than three AGs, not seeking an

extraordinary remedy of a stay? Obviously, the answer is the irreparable harm.

A lot has been written about this. Your Honor said you read the papers. I'm not going to belabor some of this, but I just want to note a few things.

You mentioned the CDC estimates. You mentioned how they've gone up in the past year. The simple answer is they're losing the fight in the opioid epidemic. But the daily deaths, approximately 204, are opioid (sound glitch).

There are currently more than 1.6 million Americans estimated to be suffering from OUD. By some estimates, the annual cost of dealing with the opioid epidemic is $78 billion. Each day that funds are held back, there are real-world and life-and-death consequences. Abatement programs go unfunded, overdose reversal medicine does not get distributed, community centers are not (sound glitch). I could go on and on and on.

The point is, as Your Honor said earlier, every day and every dollar makes a difference.

The three AGs and the U.S. Trustee are unswayed. They give three responses. First, they argue that they're working hard to get their appeals heard quickly, so a little delay is tolerable. Second, they argue that the cases have been delayed for two years by the UCC, among others, and therefore, a few more months isn't going to matter in the

big picture or a few days. They argue the new National Opioid Settlement that's bringing in lots of money, and therefore, not getting money from the Sacklers isn't as bad as it may seem.

These are dangerous arguments. Let's start with the first one. No delay is tolerable.

The attorney general from the State of Missouri recently stated that the number of opioid overdose deaths is like a plane going down every day, a month, a year. As Miss Juaire and Miss Trainor explained in their declarations, they see the devastation every day.

Indeed, our office has fielded more than 500 calls, letters, and emails from victims over the past two years and returned each one. We've listened to their stories, we've grieved with them, we've attempted to explain the injustice being done.

Indeed, yesterday, just as an example, I took a call from Robert Bernhoff, a resident of the State of Washington, who was in a 2009 ski accident, was prescribed Oxi and was on it for three years and it changed and ruined his life. Now why do I mention him? It turns out he was a fifth grade teacher in 2006 for Attorney General Ferguson's niece, and he asked that I note his unhappiness and the State of Washington's attempt to (sound glitch) distribution of funds.

If the U.S. Trustee and the attorney generals get their wish and we're stayed for even six months, and assuming that that's all it is, there will be 36,000 more deaths; that's 1 percent of the population of the State of Connecticut.

As Mr. Guard said in his declaration, it's unconscionable that the remote chance that some (sound glitch) creditor could recover some money from the Sacklers on some distant day or that some known creditors could receive additional money after years of litigation could justify the additional death of a single American; Paragraph 14 of his declaration.

The second argument that the movants make is that the case has already been delayed for two years by the UCC, among others, and therefore, incremental delay should be on us and shouldn't be a big deal. We don't believe those arguments even merit a response, but I just want to point out a few things.

First, the UCC has done virtually everything in its power since the day it was appointed to move (sound glitch) out for abatement and victim compensation. We all know what happened with the ERF. We saw the potential that this looks to be a long case, and we tried very hard to get money out to community organizations two years ago.

Everyone knows, now in hindsight, look at how

important that money could have been if the DOJ, among others, was one of the biggest opponents to the ERF.

Second, I won't go through everything that's happened over the course of the last two years. But to be clear, there was six months of mediation, of which three months was just public and public negotiations and three months of public and private negotiations, six months of mediation with the Sacklers, another three or four months to document the deal, and the elongated confirmation hearing.

All that has occurred with the movants sitting there and watching and being part of every little piece of it. I'm not criticizing them, but they couldn't say that the past two years, because the case has lasted two years, that in some way that another few days isn't going to make a difference.

The movants' third rationale, and admittedly only Generals Tong and Ferguson make this harmfully misleading argument, is that there's money from other sources coming in, and so the Purdue money -- not getting the Purdue money now is tolerable. Specifically, AGs Tong and Ferguson trumpet the National Opioid Settlement with three distributors and Johnson & Johnson, 26 billion over 15 years. Without a doubt, the UCC applauds these efforts, although ironically, the State of Washington hasn't agreed to it.

But what the AGs don't say in their papers, and indeed, they haven't said publicly in anything we can find, is that not one dollar of the 26 billion goes to private side claimants. That's not an accident.

But why am I raising that here? Washington and Connecticut makes such a big deal about the NOS in their papers, and they say that the money is coming in, but they don't say that 1.4 billion of the Purdue money goes to claimants who are getting zero from the National Opioid Settlement. It's something they don't want to admit.

Moreover, it's just innate to say that an (sound glitch) claimant because they're getting money from the NOS and tolerate some delay in getting the Purdue money. The cost of the opioid crisis is $78 billion a year.

As Your Honor said on August 23rd and during the confirmation hearing, it just seems really boneheaded to say this 4.25 billion won't pay off from all the opioid (sound glitch), you shouldn't take it.

With that, Your Honor, I'll turn to the public interest program.

The U.S. Trustee states that the co-op with the U.S. Trustee and the public interest are, "one in the same" because the government's interest is the public interest. The U.S. Trustee further states that when the government is the movant, the public interest and irreparable injury fact

(sound glitch), despite through a number of cases for that proposition.

Let me respond in four ways. First, not one case that the U.S. Trustee cite stands for the proposition that when the U.S. Trustee is the movant that the federal government's interest is the one being implicated for confirmation over (sound glitch).

Knowing this, in its appellate papers, the U.S. Trustee has started referring to itself as the government, as opposed to the Office of the United States Trustee. We're not disputing that the U.S. Trustee's website says that it's a component arm of the DOJ. But perhaps the U.S. Trustee has not cited any cases where the U.S. -- because the U.S. Trustee is never a creditor. And therefore, it's role as a so-called (indiscernible) doesn't merit its interest being equated with the public for the purpose of this analysis.

In other words, no one with the (sound glitch) to say that such an extraordinary remedy that should only be granted in the most narrow of circumstances. Perhaps courts should be wary of holding up the will of actual creditors for the desires of a non-creditor.

Second, under the facts and circumstances of this case in particular, it's inexplicable that the U.S. Trustee is taking the position that its interest are those of the

government. To be clear, there are other federal government interests in this case, and not one of them has brought a motion for a stay pending appeal.

Even the DOJ, who is unimaginably -- imaginably filed amicus briefs all but appealing the confirmation order and objecting to confirmation has not asked (sound glitch) pending appeal. The DOJ settled its civil claims for 225 million. They settled their criminal claims for 225 million. They settled their unsecured claims for 65 million. The various governmental agencies settled their issues with Purdue and other private side claimants and public side claimants by taking 4 percent of the amount that was going to go to PIs and taking and transferring it to themselves.

So the case where every governmental entity that is a creditor has already settled with Purdue and the Sacklers and the other plaintiffs is either getting money on the effective date or has already received such money. It's pretty difficult to believe that the U.S. Trustee, which is not a creditor, nor does it act in any interest other than what it perceives to be others' interest, to take the position its acting as the government.

Third, (sound glitch) for one moment that the U.S. Trustee could credibly argue that their interests are those of the government. In that instance, the question is, is

the government's interest really coterminous with the public interest in this case. Let's consider the following factors.

First, between 2008 and 2017, the Sackler's family took approximately 11 billion out (sound glitch). Of this amount, 4 billion went straight to the federal government in the form of taxes. That makes the federal government not only the biggest recipient of Sackler money in the last 13 years, but the transferee of an alleged fraudulent conveyance. Yet, the federal government has not once offered to make this money available for opioid abatement for victims of (sound glitch).

Second, the DOJ settled their civil differences with the Sackler family in 2020 in return for a cash payment of 225 million. They received the money. They refused to agree that the money would be earmarked for opioid abatement and compensation or in ERF.

Third, they settled their criminal claims against Purdue in 2020 in return for 225 million and an unsecured claim of 25 million. Unlike every single other opioid claimant in the case under the plan, the DOJ refused to agree that their money would be used for abatement or victim compensation.

Fourth, in 2007, in return they received -- they settled their differences with Purdue in return for 634

million, none of which was earmarked for abatement or victim compensation, and Purdue's agreement to comply with the CIA for five years. The terms of the CIA are publicly available. To be clear, Purdue was required to maintain a reporting to the federal government. During those five years, Purdue generated the most money they did and took out the most money out of Purdue during the 2008 to 2012 period.

Yet, after all public and private companies, they were done with mediation, the federal government, through its agency, entered to negotiate and demanded and took 25 million for personal injury claim and transferred that to federal agencies. The DOJ's settlement with Purdue contains a clause (sound glitch) under certain conditions, one of which will occur if the U.S. Trustee prevails in its appeal, the DOJ (sound glitch) a $2 billion priority claim ahead of all the other opioid claimants.

So again, not only if their appeal wins do the claimants not get anything, but the DOJ takes all of it. (sound glitch) negotiations of the ERF, the DOJ argued vigorously against the ERF. During the UCC's investigation of the Sacklers, the DOJ refused to insert itself on the claims (sound glitch) in any discovery dispute regarding the documents uncovered in the DOJ's investigation.

In other words, when given the chance to help the public by joining forces with the UCC and the (sound

glitch), the DOJ didn't do anything.

And perhaps most egregiously, the U.S. Trustee argues that the due process rights of PIs have been violated because of the imposition of the non-consenting third-party releases. Unbelievably, the U.S. Trustee went out and tried to recruit personal injury victims who will join their brief; apparently, their first foray into speaking to personal injury victims in this case.

Yet, nowhere in their papers did they explain the reality that if they are successful in their appeal, it's almost certain that every single one of the Debtors' 140,000 personal injury victims will receive close to zero, if not zero, in their own litigation.

Fourth, the Official Committee contends the public interest in this case overwhelmingly supports denying the stay for the reasons of the irreparable harm that I mentioned earlier, the overwhelming support of the voters, the overwhelming support of the ad hoc group.

Indeed, I think it's fair to say that there's never been a case where the public interest is so overwhelmingly opposed to the (sound drops).

Your Honor, with that, I'd like to address the proposal that you made about 15 minutes ago.

THE COURT: Okay.

MR. PREIS: If I understood your proposal earlier,

Your Honor said that it'll be -- a condition to the effective date is that it will be the earlier of January 7th and the District Court ruling; is that correct? Do I have that right?

THE COURT: Well, first, I have not -- this proposal does not contemplate the entry of a stay. What it contemplates is the denial of the stay motions without prejudice to the future right to bring them on the conditions of the denial and that it lays out the conditions.

And the first condition is, in fact, that the appellees would agree that the effective date would not occur until the District Court's ruling and January 7.

MR. PREIS: So if I understand that correctly and if the Debtors are not permitted to seek a sentencing hearing earlier than January 7th, which was I believe another condition, then it's possible if, as we all heard Judge McMahon say that she -- you know, she has a trial coming up on December 7th, and we kind of read between the lines that Her Honor may rule before that.

Then between, let's call it December 7th and January 7th -- now actually, it's really January 14th because we can't go into (sound glitch) until seven days after the criminal sentencing, you would be delaying (sound glitch), but because by those terms. Is that correct? I

want to understand if that's what you meant.

THE COURT: Well, yes, correct. And that's primarily to give the movants the opportunity to renew their motion.

MR. PREIS: Again, (sound glitch) that will be 37 days -- I'm sorry -- 30 days, 37 because (crosstalk).

THE COURT: Well, except that under Rule 8025, unless Judge McMahon shortened it, there would be 14 days added on to the December 7th date, so you'd be at December 21.

MR. PREIS: Right. Which is I think why in the original proposal, we get offered December 20th, which I understand was not December 21. The only reason I'm raising this is because part of our argument, the irreparable harm (sound glitch). And I know Mr. Kaminetzky said, you know, being December 20th to December 30th is okay. And then, you know, there was some discussion about the holidays, so let's move it to January 7.

In effect, we've now elongated almost more than half a month before -- if it turns out that Judge McMahon actually rules by December 7 and we're able to get a sentencing hearing by December 20th, we will move their effective date by 17 or 18 days at the very least. And again, from our perspective, every day matters.

THE COURT: Well, except -- let me address that

because, again, I fully accept that there is almost immeasurable harm in not getting the plan distributions to PI claimants and to the state and governmental entities for the purpose of abatement, and the other entities, the Indian tribes and the hospitals and the like.

But based on my understanding of the plan and Mr. DelConte's testimony, the money wouldn't actually go to them until sometime after the effective date and probably weeks after the effective date.

So I think that the real issue where the balancing of the harms comes into play or the real time comes into play is where the movants would seek a stay after the District Court's ruling, pending appeal to the Second Circuit.

MR. PREIS: I don't dispute your reading of Mr. DelConte's declaration. But isn't what all you've done is just move the same period back (sound glitch).

THE COURT: I did. I moved it a week from the end of the year to January 7th, and that's basically because -- or arguably two weeks from December 21 to January 7, and that's basically because I have some concerns about imposing a hearing date on Judge McMahon around New Year's Eve or around the Christmas holiday, so that's the only reason.

And it didn't seem to me, given the testimony, that the delivery of the distributions beyond the trusts

would happen any slower because of that.

MR. PREIS: I'm sorry, that wasn't my point. I'm sorry.

What I was trying to say is if all you've done is move the initial distribution date back from December 21 to January 14th or whatever it is, then that same period, between the time the money first goes to the trust and the money goes out, that same increment just gets added whenever the money first goes out (sound glitch).

So that delay, that lag from the time the money goes to the trust to the time it actually goes out, that occurs no matter when the money (sound glitch) mid-January, then you have a delay of (sound drops).

So the fact that there's -- you understand what I'm saying or am I not making myself clear?

THE COURT: No, I do. I understand. For example, the 14 days for the states to deliver their final NOAT allocation would start running from the effective date, which would be those 14 days later. I do see that.

MR. PREIS: Yes, that was my point. And that's why when I said every day mattered, so it is actually by moving everything back 17 days, it has a real effect. So anyways, that was my first point.

My second point is --

THE COURT: Well, could I interrupt you for a

second? I guess for mootness purposes, it doesn't really help to change it to the distribution date, as opposed to the effective date because the effective date is also the date when you transfer it to the trusts and set up NewCo, the benefit company.

So I'm thinking out loud, but I think you may have offered a solution of just making it the distribution date, but I don't think that works for mootness purposes.

MR. PREIS: Yeah.

THE COURT: Okay.

MR. PREIS: The second point, and I know Mr. Kaminetzky raised this, this idea of having to give public notice of when the Debtors even request the notice.

THE COURT: No, I understand. I understand that point. I don't think that really helps very much in any event. I mean, the key thing is when the District Court schedules it.

MR. PREIS: Correct, yes.

THE COURT: Right.

MR. PREIS: Okay, that was it. Okay, that was it, Your Honor. That's all I had. Thank you.

THE COURT: Okay.

MR. FOGELMAN: Your Honor, may I briefly respond to Mr. Preis's, frankly, outrageous accusations against the government?

THE COURT: I think you have a right to do that, Mr. Fogelman.

MR. FOGELMAN: Your Honor, I just want to say about everything Mr. Preis said was a mischaracterization or just absolutely blatantly untrue. That time, Your Honor, is all entirely irrelevant as to whether a stay should be granted.

And, you know, I'm happy to go into everything one by one if Your Honor would like. Again, I don't think any of this is even relevant, but just to give one brief example. The government, you know, submitted a letter to the Court at Mr. Preis's urging, when the government first was in settlement negotiations with the Sacklers and Mr. Preis raised the issue about providing those funds toward abatement.

And we clearly explained to the Court on the record that the government is constrained in how it can respond by the Miscellaneous Receipts Act. And that, in any event, while we couldn't direct those monies towards an abatement fund, you know, the largest recipients of civil recoveries are federal health care agencies that provide billions of dollars towards opioid use disorder treatment.

So for Mr. Arik to stand up there and make the statements he made is absolutely outrageous, Your Honor, and completely irrelevant.

I'm not going to -- sorry.

THE COURT: Anyway, I think it is largely irrelevant. The only way it is relevant or the remarks about the role of the federal government in the case and in history of prior settlement really goes to what the U.S. Trustee's public interest argument is.

And in that sense, I think the U.S. Trustee has been clear, in front of me at least, that it's not focusing on anything other than its party in interest right as a watchdog over the bankruptcy system, not on the other interests of the federal government.

And on that point, Mr. Preis is basically just saying that, you know, the watchdog is, in his view, barking at the wrong person. But I think we should just cut it off at this point.

MR. FOGELMAN: Thank you, Your Honor.

THE COURT: Okay. Should I hear from the ad hoc group of states and other plaintiffs?

MR. WAGNER: Yes, Your Honor. Jonathan Wagner from Kramer Levin Naftalis & Frankel, representing the ad hoc committee of governmental and other contingent litigation claimants. Can you hear me?

THE COURT: Yes.

MR. WAGNER: I'll make some introductory remarks and then address the issues of irreparable harm, balance of

hardship, and public policy. And I'll address a long-term stay and short-term stay, and I'll try not to repeat the arguments that have been made today.

It's important to remember that the committee represents dozens of governmental agencies and entities. And despite the handful of state objections and the U.S. Trustee's objection, far more government entities support the plan and oppose a stay than seek a stay; it's really far more.

And there's a super-majority of states who support the plan and 97 percent of the non-federal domestic governmental entities who voted on the plan voted in favor and there's a good reason for that and Your Honor has recognized that in the confirmation decision. The sooner the money is allowed to be spent on abatement, the better the citizens of those states and those supporting states and local governments will be.

And despite suggestions to the contrary, the dissenting states, their citizens will benefit as well. They'll get their fair share of the monetary recovery, and they'll get non-monetary benefits as well.

So let me now turn to irreparable harm, balance of hardships, and public interest. In terms of a long-term stay, that issue has been addressed in Mr. Guard's declaration, which Your Honor I know has read and read

carefully, and it's been addressed in the other declarations as well.

And just to sum up at Paragraph 16 of his declaration, "The abatement plan is designed to save lives, and any delay in funding the abatement plan will thwart that critical goal." And between now and June, there's close a billion dollars that's supposed to be allocated with respect to abatement. That's a serious amount of money.

In terms of a short-term stay, I make three points. Most of the points on the short-term stay have been made already, including with respect to equitable mootness -- that's clearly off the table -- the mechanics of the sentencing, and also the suggestion that somehow the Court can cherry pick the settlement here and have it rejigger. This was a settlement that was really a herculean task to achieve, and it was carefully constructed and can't easily be pulled apart.

The three points I want to make on the short-term stay are as follows. First, burden matters, and here the burden is squarely on the movants, and they have not satisfied their burden.

Second, a stay, even a short-term stay, creates a cloud and to give one -- and an unnecessary cloud. And just to give one example, the committee has been interviewing potential board members for the MDT, the NOAT, and for

NewCo. And I think it's not a stretch to say that the more there's a delay in the effective date of the plan, the more the candidates -- some of them are very prominent people -- may be reluctant to sign on.

And then the final point I want to make with respect to the short-term stay is that the Court has to exercise its equitable powers sparingly. That's, in many cases, just give you a couple, United States against Veres, 1989 U.S. District Lexis 7069 at *17, "A court should exercise its equitable powers sparingly." And the same point is made in many bankruptcy cases, In re Rix 2015 B.R. Lexis 3988 at *6.

And in light of the safeguards that have been offered here, it would be an improper exercise of the Court's equitable powers to grant a stay.

The last point I want to make, and I hope this isn't a point that Your Honor has to address, is the bond. I don't think Your Honor needs to get into the issue of whether the U.S. Trustee needs to post a bond because the states do. And Your Honor made the point, citing the advisory committee language and other opponents of the stay have cited the cases, that made clear that the states can't piggyback on any rules that might apply to the U.S. Trustee.

That's all I have, Your Honor, unless you have any questions.

THE COURT: Okay. Well, I guess -- look, what I've been considering is not a stay, but an order denying the motion on conditions, so that would obviate the need to deal with a bond. And, you know, I don't think that your side of the issue would prefer a stay with a bond to that, right?

MR. WAGNER: Certainly not.

THE COURT: Okay, all right. Thank you.

MR. WAGNER: Thank you.

THE COURT: I'm also assuming, because I would also, if I were to grant a stay, condition it on the ongoing commitment as the appellants have already committed, to pursue all appellant relief on an expedited basis. But I'm assuming they will continue to do that based on their statements and their understand of the importance of resolving these issues promptly.

MR. LIESEMER: Your Honor, may I be heard very briefly?

THE COURT: Sure.

MR. LIESEMER: Jeffrey Liesemer on behalf of the MSGE Group.

Your Honor, when Judge McMahon ruled on the United States Trustee's emergency motion for a stay before she denied it without prejudice and she did so on the condition that the appellees, which included the MSGE Group, enter

into a stipulation saying that all of the preparatory actions under the advance order are not a basis for invoking equitable mootness. She ordered the Debtors to impose a 14-day advance notice requirement on any effective date, and she also said that the appeals would proceed on a rocket docket.

And on that basis with those guardrails in place, Judge McMahon said that the U.S. Trustee's speculation about the possibility of equitable mootness did not rise to the level of irreparable harm, and I would submit that it's the same today. There really hasn't been any material change. The movants haven't identified anything that changes the situation from the time that Judge McMahon has ruled.

And in addition to that, we have the Debtor, who has offered up even additional guardrails, and Your Honor is now contemplating guardrails as well insofar as denying the stay motions with conditions.

So no showing with respect to irreparable harm and specifically equitable mootness has been made, and I think the motions can be safety denied on that basis, subject to the guardrails, which Judge McMahon found to be sufficient as is.

With respect to a longer-term stay, we share Your Honor's concerns that that would clash with Rule 8025 and essentially read Rule 8025 out of the bankruptcy rules. And

so, therefore, if there were a stay in place if they did make their showing, then it would have to be limited up through the District Court's ruling.

And with respect to the other elements, with respect to balance of harms and the public interest and the bond in the event that there would be an unlimited stay to allow the appellate avenues to be exhausted, we simply stand on our papers and on Colin Jorgensen's declaration.

Your Honor understands the point as time progresses, the financial and human toll increases, and that puts a big weight against any stay. And with respect to public interest, there is public interest in settlements and the finality of reorganizations and, above all, finding one way to resolve this public health crisis.

So we join the other opponents in opposing any stay pending appeal. Thank you.

THE COURT: Thank you.

MR. SHORE: Your Honor, Chris Shore from White & Case on behalf of the ad hoc group of individual victims.

I want to -- and I've been feverishly kind of working on my notes to address what I think is the issue here, both respect the long-term stay, short-term stay, and the idea of a denial of motions with conditions.

Let me start here. Look, we tried to address the issue outside of Court with respect to essentially a denial

of the stay without conditions. The appellants refused, so now we have two pending motions with two separate requests: one is a pending motion for a stay through the District Court decision plus 14 days, and another is a request from the U.S. Trustee for a stay through all appeals.

I think you need to deny both of those on the merits with findings and conclusion. And you ask, why can't I just do this simply if we prevail at the District Court on the appeal, and we think we will -- we wouldn't be here fighting this and have fought for the plan if we didn't think we will -- there is going to be another hearing. Whether that is in the end of December or the beginning of January, someone's bringing a motion in front of Judge McMahon for the big stay, the one that nobody can control, which is the time between when the Second Circuit appeal gets docketed and when the Second Circuit rules.

So there is a fact of a hearing coming up. And as one of the very creditor constituencies who isn't either funded by taxpayers or by the estate, we simply can't have 10-hour hearings all the time on these subjects without getting work-product which can be used in subsequent hearings.

So my request is that we actually make use of the evidentiary record that's here, not just throw this to Judge McMahon to deal with with her busy docket and to have a

whole other hearing, evidentiary hearing, which she may not even have the time for given the announcement of what her schedule is.

So let me turn to the merits on why you should deny the stay and what the specific findings I'm talking about. Let me just address very briefly the likelihood of success because no one touched on this. I'll only say this: The order that was presented to you reflected what the Debtors conceded, not what anybody else did. We all became appellants after that hearing, or at least we became appellants after that hearing over the objection of the U.S. Trustee and we all joined the argument. So that's a technical argument that you can get rid of.

I want to focus on only one event: The day that the Debtors are ready to consummate their plan but can't because of some existing stay or the existence of some conditions and how we protect the individuals, just the individuals, from the harms accrue from that day forward. I think those harms accrue whether the stay is short or whether the stay is long, and I want to address an issue that Mr. Preis raised on that (sound glitch).

Let me start here. You know that at the beginning of the hearing that (sound glitch) rules are set up so that (sound glitch) did this. It's not, I don't think, because the Bankruptcy Court is likely to agree or disagree that its

own findings are subject to appeal or not, but rather because the Bankruptcy Court is in the best position, understanding who the parties are, what they're looking for, what they're promising, and what the harms are in the event there is or is not a stay.

So even if Judge McMahon were to rule before an available exit and contemplate a further stay, this Court's view of what (sound glitch) stay, that is a stay that would exist through a Second Circuit ruling or a cert denial may prove critical to her own analysis, which is likely have to be conducted on a short notice brief period if and when that (sound drops).

As to the harm calculus here, as we pointed out in our objection, it's not a one-size-fit-all analysis. Each applicant must make its own case based upon its own harmed balanced against the harms to the others and the public.

The U.S. Trustee is in a different position than the states. First, they allege no harms to themselves. They have no economic (sound glitch) in the outcome of this (sound drops). Two, the U.S. Trustee's claim, I think as part of the public interest prong, is that there's a societal harm of the erosion of constitutional rights of individuals who allegedly have direct claims against the Sacklers, which are being released for no compensation.

I'm not going to repeat arguments I made at the

last hearing regarding this no compensation argument. I'll just say that the intention is both counterfactual in light of the TEPs and inflammatory. But their whole analysis centers on the harm to these hypothetical individual Sackler claimants.

Now, as we pointed out in our objection, we represent probably the bulk of individuals who would otherwise have the right to bring claims against the Sacklers in light of the fact that 35,000 of our group didn't vote on the plan and several hundred voted no.

But I think the U.S. Trustee misses the mark when they attack our group for what seems to be a criticism that we do not speak for every victim. We have never purported to speak for every victim. We've only purported to speak for our group, and we have spoken, sometimes in a loud voice, on behalf of those who've authorized us.

In contrast, not one victim has authorized or come forward in support of the U.S. Trustee's motion for a stay. And the important part here is not the authorization piece; it's the lack of identification of the individuals who may be harmed and a quantification of that harm.

At the last hearing, Your Honor spoke directly to the U.S. Trustee about trauma and what you viewed as the narrow window that it provides for direct claims against non-debtor fiduciaries and shareholders. The time for them

to come forward with proof of harm was now. What followed was not proof, but an attempt to cite to complaints that allege claims squarely within (indiscernible) and Madoff.

There was a reference today to the Hartman pleading, which they did not include. I don't know how they expect Your Honor to make the analysis that everyone of these circuit court says is you need to look at the substance of the claim, not the label, to determine whether they are derivative claims or individual claims. I've reviewed the complaints. They are all classic-looking derivative claim. You can't just say something is a consumer rights claim when, in fact, it is just dressed up as a breach of fiduciary duty claim by directors and officers.

So this is a stay hearing where they are supposed to come forward with evidence. Just saying that someone has alleged it in a complaint does not quantify the harm of denying that. There is no articulation -- these claims are worth $30, these claims are worth $100, these claims are worth a billion dollars. There is none of that in the U.S. Trustee's application.

So what we are left with on their application in the harm calculus is on the one side, the constitutional rights of unidentified individuals with unquantified claims that are hypothetically, but not proven, to be non-

derivative, all of which can be asserted and against and recovered from the TADPs that will be funded by the Sacklers. That's what their harm is.

Balanced against that and what the remainder of my analysis focuses on and the real harms of real individuals that accrue the moment the Debtors are ready to consummate the plan, which could be December 14th, it could be January 6th, whatever, were contemplating that they won't be able to do that because there is a pending order of court, whether written as a stay or a denial of a stay with conditions.

And let me pause here because people are just getting it wrong with respect to the harms. There are two harm prongs and two things to be balanced. The applicant on a stay needs to prove irreparable harm to them. They also need to prove the lack of any harm to individuals. It's their burden. And we're not talking about irreparable harm because people aren't focusing on, and I think Your Honor was alluding to it, what a bond means.

The bond is the source of recovery for people who were harmed by the imposition of a stay. None of these applicants have come forward and said regardless of whether there's a bond, you can feel free to sue me if I turn out to be wrong and I lose on appeal after a three-month delay. That's not how bonds work.

Now, as to the harm for the individuals, which

need to be protected, some of those harms are mathematically certain. Under the plan, the personal injury victims don't ride with the ups and downs of the Debtor. We get a fixed (sound drops). Whether the plan is funded in December 2021, January 2022, January 2023, or some other time, the fund and this plan remains in place, the amount paid stays the same, which means there is a certain loss of the time value of money.

And to amplify what Mr. Preis said, with respect to the individuals, once the trusts get funded, then the notices -- remember, we had the hearing on the advanced payments so that we can get the notices out immediately -- the notices go out. In addition, all the expenses, the frontloaded expenses of the trust, can get paid. Then as soon as someone gets a form, they can check a quick pay and it can go back and we can start the distribution process.

So if the plan is delayed 14 days, the initiation of that process starts 14 days later, the first payment that goes out is 14 days after that. So there is a demonstrable harm in any stay of the effective date of the plan beyond the date that the Debtors are ready to go forward.

There are also mathematically certain but unquantifiable fees of just the cost of continuing in the bankruptcy case. The advantage of an effective date is people can go pencils down with respect to issues that are

ongoing in the case. And again, we are not a state funded or taxpayer funded, my participation in hearings like this is just coming out of creditor recoveries.

I won't touch, because Mr. Preis did it so well, the harm in delaying abatement funds. But in a world in which a stay is in place for only 14 days, the Debtors are told cool it 14 days and 10 -- let's leave aside debts payment -- 10 new injuries occur, who's paying for that? Why is it the Debtors responsibility? They wanted to start the process of getting money out to people. The applicants came forward and said, hold your horses, I've got hypothetical rights that need to be protected here in the interest of (sound glitch) and 10 new injuries occurred, the United States Trustee is not stepping forward and saying don't worry, we'll take care of those people.

But the real risk here, and which nobody is articulated and which I think Your Honor needs to tell to Judge McMahon, is the risk to the deal. Right? Now let me start -- I'm still trying to wrap my head around a public use of the plea bonds, a little example, but the personal injury victims are not holding a gun to anybody. We have no power over this situation. And unless and until the Debtors are ready to consummate this plan and the Sacklers are willing to fund, we're not getting anything. We can't compel anybody to do anything.

And as to the risks of harm, the Court has a detailed exhaustive record of the difficulties they faced getting to consensus in these cases, the hard fought triumph of the deal coming together, especially for victims, through direct cash payments and the use of essentially all but the U.S. Government's money for abatement.

This Court, not the District Court or the Second Circuit, is in the best position to understand and articulate the risks to Debtors, that it should articulate I believe in findings and conclusions, when their effective date gets stayed.

And the risk is what happens if something stops the effective date of the plan. First, if this deal were to fall apart prior to an affirmance, right? We get in a situation where someone delivers a termination of the deal, right, and then we find out we were right all along. And were this case to liquidate, there's unopposed evidence that everybody gets nothing. The liquidation analysis results in a zero for individuals.

That's not hypothetical. Remember Mr. Preis said to you with respect to the super-priority admin claim, the U.S. Government has not committed that in the event that the confirmation is -- or sorry -- the plan does not go effective, they won't set forth their super-priority administrative claim. In other words, there is a real

possibility if this deal doesn't get to closure that all of the money goes to the United States. Does anybody really want to be responsible for that?

The Court's also in a unique position to understand what basis what a big case like this puts forward in terms of harms, the potential harms, to a deal in an uncertain period. First, plans face market risks. During this case, the Dow had its second biggest percentage drop ever. Is anybody really committing that if the Dow goes up 30 percent that we're all going to let the Sacklers walk away with that additional bounty, or if the Dow goes down 30 percent, the Sacklers are still going to be willing and able to fund?

Plans face regulatory risk, right. I mean, those risks in all fields that occurred or what they're talking about there, let's get the Sacklers out of jail for free deal, regulations change and what was possible at one point in time may not be possible later. Again, is that really going to happen between December 14th and January 7th? Probably not, though not certain. But if we're talking about informing Judge McMahon of what could happen between January and August, that matters.

Plans face legislative risks. Nobody here, by the way, none of the appellants here is committing that they would not be pursuing any legislation that could have an

impact on this case.

Plans face political risk, especially in this case in which half the creditor body are elected officials. The notions that come or others will all stay in the deal as their political landscape changes is not certain.

And as Your Honor noted during the confirmation hearing, this settlement is around a shifting landscape of judicial precedent that exists, all of which at any given time will empower somebody who cut the deal to say they got a bad deal and somebody else to say they got a good deal.

Obviously, the risks increase over time. But nobody is promising anything if they are wrong in the law and it takes long enough for us to prove that to the Appellate Court that the plan falls apart and we have to start over. Nobody is assuring that a plan which is consummatable on December 14 will still be consummatable on January 14th.

So how does this play out? Again, I think the U.S. Trustee, given their role, statutory role, and the absence of any direct harm to them and the fact that they're purporting to speak on behalf of individuals and have yet to articulate who they're speaking for, what their claims are, and what they're worth should have their application denied on the merits with prejudice right now with specific findings about their lack of proof, with one caveat.

They've taken the position that they have zero responsibility to post the bond. I don't need to get into that argument at this late date. They have zero economic responsibility if they're right.

So deny their motion. But they can be clear, nothing prevents the U.S. Trustee from piggybacking off a stay that is awarded to some other party, and nothing prevents the U.S. Trustee from volunteering to post a bond to protect for a month.

So what does a bond look like with respect to the other applicants? I don't think any stay is necessary. I think a denial of the stay with conditions isn't necessary. But we have no objection to this Court giving Judge McMahon until January 7th to rule.

But if the Debtors are ready to consummate before January 7th, they should provide a notice, everybody, 14 days that we're ready to consummate. And that will give the applicants the opportunity to post a bond in that window if they want to have a stay or they can go to Judge McMahon if they're riding on her stay, that is your stay is requiring and she still hasn't ruled, that gives them an opportunity to raise that with (sound drops).

Even with respect to this short bump, right. That's our only source of recovery for both catastrophe and the mathematically certain funds that accrue. We shouldn't

equate an opportunity for a meaningful appellate review with a free opportunity for appellate review. And I tend to that that if and when the states are forced into a position of having to post a bond, they'll think long and hard about their pursuit of further appellate relief beyond Judge McMahon.

To form an amount, I'm not -- I can't quite figure out how best to create the right dynamic for that. But it seems to me that if the Court set a per diem or a bond for the period between the time the Debtors are ready to rule and when Judge McMahon are ready to exit and when Judge McMahon rules, that will precipitate a discussion with Judge McMahon about when she is able to rule. And it will allow a ready calculation. If she says I can't do it by the 7th, I can do it by January 30th, that's 23 days of per diem (indiscernible). And I tend to think, as I said, that sparks a conversation about how this is going to proceed forward.

As to the larger bond, I guess if Your Honor is not contemplating extending beyond the time that's necessary for her to rule, it still, as I said, provides context if you were to provide findings and conclusions that there are real harms, demonstrable harms, and the manifest risk of catastrophic harms that need to be protected with a bond. Again, subject to upward or downward revision by Judge

McMahon and subject to what other parties use. But we're talking about (indiscernible) in the hundreds of millions of dollars or billions. Because if the risk were to manifest itself, something comes out that causes somebody to walk away from this deal and we end up in a liquidation scenario, nobody wants to wear the risk of having stopped a plan which would have provided (indiscernible) to people and that turned out to be legal, but nonetheless was frustrated because there was an open-ended stay in place.

Not one of the states has come forward and say they didn't have the wherewithal to post a bond. And again, a bond only sets the outside amount of the damages which get compensated. If it turns out that they have to post a $500 million bond and only a million dollars is proven to be the actual damages, so be it. Then only a million dollars gets compensated out of that. But we don't set a bond based upon a hope that the debtors will be able to consummate in this fixed 12-month window that the Second Circuit is going to need to be able to issue what we all hope will be a ruling which sets forth in chapter and verse exactly what the rules are with respect to non-debtor reliefs.

The last point on these conditions. Conditions run both ways. And this is why I think that the denial with conditions on the Debtor which you are raising now is a bit fraught. Conditions run both ways, right? The appellants

here will be taking an opportunity of having an additional 14 days to do whatever they're going to do. Are they allowed to legislate in that period? Are they allowed to exercise their police powers in that period? Are they, as Mr. Kaminetzky hinted to, able to stand in front of the district court in New Jersey and argue that the Court should adjourn that hearing? Right? Which would be the setup date for how this goes forward. Are they required to commit to move quickly as well? Are they free to argue in front of the Second Circuit that they really need 90 days to file a (indiscernible).

I just think lifting it and saying a denial with conditions opens up a whole debate about what they're allowed to do that I think (indiscernible) with a denial of these motions on the merits or -- or if they want a stay, a stay with an interim bond requirement, that is a shot bond requirement and an understanding going forward of what that stay -- that bond is going to look like if we are getting a ruling, you know, at the end of December or the beginning of January.

THE COURT: Okay.

MR. SHORE: And other than that unless Your Honor has any questions, that's all I have.

THE COURT: Okay.

MR. ISRAEL: Good afternoon, Your Honor. Harold

Israel on behalf of the NAS Committee. May I be heard very briefly?

THE COURT: Sure.

MR. ISRAEL: Thank you, Your Honor. The NAS Committee, another entity that is not funded by the taxpayers, represents the most innocent victims of the opioid crisis, the NAS children, will focus its argument exclusively on the irreparable harm and the public interest in light of Mr. Shore and Mr. Preis' arguments which they adopt.

The appellants in this case have made clear that they will go to the ends of the earth to prevent the plan from becoming effective. In the meantime, the opioid crisis rages across the country.

A stay will mean, ironically, that the Sacklers will retain all of their money, except of course what they have to pay the professionals, while compensation to the NAS children and the other personal injury victims will be delayed indefinitely if not forever. There will also be a delay of billions of dollars of abatement funds that would otherwise be used to combat the opioid crisis and a delay in making vital documents available to the public through the document repository.

For what reason? So that the appellants can exact vengeance on the Sacklers without any regard to whether

there will be any corresponding benefit to the personal injury victims, including the NAS children, of the opioid crisis.

To be clear, the NAS Committee had hoped for a far larger settlement. However, the plan, including the settlement and the third-party releases and the corresponding public interest must be viewed in reality. The NAS class voted overwhelmingly in favor of the plan, and Kara Trainor, a parent of an NAS child, outlined in great detail in her declaration why she supports the plan, notwithstanding her personal situation. The appellants ignore this massive support of both the voters and Ms. Trainor in their pleadings.

Simply put, a stay of the confirmation order delays implementation of what could be lifesaving programs for opioid victims, current and future, and compensation for some of the neediest people in the country. For what? So perhaps the U.S. Government can get an additional $2 billion at the expense of all other claimants, a result worse than the tobacco litigation? Or so three states or five states can make life miserable for the Sacklers by litigating against them for the foreseeable future, resulting in no compensation to the NAS children and the other opioid use victims and allowing the Sacklers to retain billions of dollars that would otherwise go for abatement? Who wins in

this case?

Vengeance is not a purpose of the Bankruptcy Code and will not compensate the NAS children or the other opioid victims, will not fund research and other abatement strategies, will not make millions of opioid-related research documents available to the public domain. It will, however, allow the Sacklers to retain more of their wealth than they would under the plan. It cannot be said that such a result is in the public interest. Thank you, Your Honor.

THE COURT: Okay, thank you.

I don't know if any other objectant wants to speak. I forgot to ask Mr. Kaminetzky if he could update me on the termination right that was addressed in the pleadings and in Mr. Gold's argument.

It seems to me that, at least with respect to the type of relief I am contemplating, it's highly unlikely that that termination right would be exercised. But I'd like your thoughts on where it stands, whether it's been waived through the date that you've proposed and the like.

MR. KAMINETZKY: Apologies, Your Honor, for that dramatic camera movement.

The answer is I don't -- we have not had that discussion. Maybe you should ask the Sackler. This is something that was heavily negotiated and it's in there, it's part of the agreement. I would suspect that it won't

be a problem given the short term that we're talking about. But kind of following up, I mean, it's in there, and it's their right to waive it or not.

Unlike the previous way that we talked about before when it came to the direct certification, I don't have an answer sitting here whether or not they'd waive, but I certainly hope that they would.

Maybe it's time to mention just to underscore -- and maybe this is the appropriate time in the changing landscape. During this hearing, actually, the Oklahoma Supreme Court reversed the J&J judgment, saying that public nuisance statute doesn't apply in this are to legally-manufactured products. And this comes on the heels of the California decision earlier this week going the same way.

But let me just leave it at that. And, you know, I assume you could direct this to the Sacklers.

THE COURT: Okay. Well, do I have the two sides of the Sacklers' counsel on the call?

MR. UZZI: Your Honor, it's Gerard Uzzi of Millbank on behalf of the Raymond Sackler Family.

THE COURT: Afternoon.

MR. UZZI: As it relates to -- go ahead, Your Honor, I'm sorry.

THE COURT: I was going to say, first of all, I'm not sure whether the denial of these motions as I've posited

it would trigger the termination right. But assuming it did, would that brief extension be something that your clients would be prepared to assert as a termination right?

MR. UZZI: Well, Your Honor, just before I get to that, just to check a box. As it relates to what Mr. Kaminetzky raised on the issue of certification, that has been waive. I think, frankly, we had formally memorialized it (indiscernible).

THE COURT: Right.

MR. UZZI: As it relates to -- I think the termination right you're referring to now is that three months after confirmation date -- there has not been a request made of our clients to waive that. So I'm not in a position today to say (indiscernible) specifically on that issue. And right now we are anticipating at least that the court is going to rule before then, the district court is going to rule before that time.

Your Honor, I don't want to speculate as to if and when I do consult with my client as to what they'll say other than to say we've come this far, Your Honor. There is certainly not a desire to abandon this at this point.

THE COURT: Okay, thank you.

Ms. Monaghan, I know you represent the other side of the Sackler family.

MS. MONAGHAN: Correct, Your Honor. On behalf of

the so-called Side A of the family, we are in the same position as Mr. Uzzi is in that no request was made of us for a waiver. That said, we're not looking to walk away from the settlement in any regard. I just haven't actually gotten instruction from my clients on the questions they have put to us.

THE COURT: Okay, thanks. Okay. I said that I would be willing to hear a brief rebuttal, but I really want this to be very brief, not a rehash of arguments that have previously been made, if anyone wants to speak in rebuttal.

MS. LEVINE: Your Honor, this is Beth Levine. My computer is going very slowly right now, so hopefully we'll get video in a second. I did just want to speak briefly. I will try not to repeat anything. I wanted to address a couple of things that have been raised that I think are inaccurate.

You know, there was a suggestion that it is somehow improper for us to seek a hearing because while we tried to negotiate a consensual resolution, it didn't work. And we did as part of that effort suggest why don't you give us -- you know, if you've got a list of things you have exempted from the stay, tells what they are. And, you know, it didn't work.

THE COURT: I am not blaming either side for the fact of this hearing. I had the opportunity after the

appellees sent me an email requesting a chambers conference to meet and see if a settlement could be obtained. And I just concluded it was of more benefit to have a full record.

MS. LEVINE: Thank you, Your Honor. There were suggestions or allegations that the United States Trustee is taking the position it's taking because it's trying to get the, you know, $2 billion. And that is just an absolutely baseless allegation. I think if Your Honor wanted to hear more about that, Mr. Fogelman could address it. But I think it's enough to say that that's baseless. We've taken this position on the non-debtor releases the whole time. It's not just some way to try and get back that money.

With respect to the United States Trustee's role, I think you've recognized in your comment that, you know, we are not representing the government in its creditor role, but we are representing the government in the government interests. We obviously have a disagreement on where the public interest is. You know, we've talked about the harm. I don't want to repeat myself but, you know, we don't represent individual victims, White & Case doesn't represent individual victims. They've acknowledged they don't represent anyone. There are individuals who have come forward and objected. There have been over 200,000 people who voted no. So we've cited some of those examples. Ms. Isaacs, for example, Mr. Hartman. And we did include the

complaints in our request for judicial notice, including Mr. Hartman's complaint.

With respect to the suggestion that we might voluntarily post a bond, we don't have the authority to do that, so we think that's just not a factor to be considered.

THE COURT: Well, I would consider it in the sense of it's a factor to consider in balancing the harms. Not as something that I could require, but the absence of one may make it harder to balance the harms in your client's favor.

MS. LEVINE: I do think it's interesting with respect to this question of the termination right. There are two questions. One is just as a factual matter; my understanding is that termination right doesn't come into play if there has been a delay because of licensing delays. And we don't know what the status is, but we think it's interesting that the Debtor's proposed the stipulation without checking on that. But we don't think, as we put in our papers, that that is likely to happen. And it does not sound like it is based on what's been said here today.

Lastly, you know, obviously we are here on our motion. We're asking for a stay at least until the district court's decision. But with respect to the order it sounds like you are considering, you made a comment that I wanted to clarify, which is whether you're suggesting you would enter or include in your order a limit on the ability to

seek a stay from the district court.

THE COURT: No, I don't remember saying that.

MS. LEVINE: Okay. Then I may just have not heard that correctly.

THE COURT: It's just the opposite. You would have the ability to seek a stay from the district court after you get the notice.

MS. LEVINE: Your Honor, it's been a long day. I don't want to repeat what we've said. Obviously we disagree with a lot of what the stay movants had said, but we will at this point stand on our papers and I will cede the floor to any other movants who had something to add.

THE COURT: Okay.

MR. EDMUNDS: Your Honor, if I may just for less than a minute. Brian Edmunds for the State of Maryland. I would just point out some of the overarching themes that have been presented to you, that we are a state and we are charged with protecting our public and believe that we are doing that in appealing. And I think that some of the arguments that would give to us the status of essentially a private creditor are what requires us to appeal. I think that it's our job, and we do this, to protect. And we are spending money now on the opioid crisis on trying to abate it. And I think that our -- I think it's important to remember that and recognize that, that we wouldn't be doing

this and pursuing an appeal if we didn't think that we were serving the public. And that's all I have, Your Honor.

THE COURT: Okay.

MR. GOLD: Your Honor, Matthew Gold, Kleinberg Kaplan. Can you hear me?

THE COURT: Yes.

MR. GOLD: Thank you. Your Honor, I too will be very brief. First, I just want to note that the argument that Mr. Preis made, and we've heard this several times about how criminal liability is not being affected by this, is a total red herring. No one has ever contended the criminal liability was implicated by this, but that's not at all the point. The states have a significant statutory scheme that involves both criminal and civil penalties for which to go against wrongdoers. And among other things, there are different burdens of proof. And that's why the states have both criminal and civil laws that play in this area.

And it's not for Mr. Preis or the Debtors to say you have your criminal remedies, that's enough, you don't need those other ones, in the first instance. And secondly, for us to be pointing out that the result of this settlement and this plan is to give the Sacklers complete immunity of their opioid-related obligations on the civil side does not mean that we're implying that it has anything to do with the

criminal liability. And it's valuable enough that the Sacklers have been insisting on it. So I think that's just simply a matter of misdirection.

Second, I just want to note Mr. Shore, after making a statement about how we needed to not engage in speculation and to needed concrete matters, engaged in a 10 to 15-minute series of speculations and hypotheticals about various risks without evidence about them occurring, but simply as speculation that this might happen and that might happen as risks involved of Court's resolution. We submit that those are not germane for these purposes and have no demonstrated basis other than just speculation.

Third, I just want to note that this morning, I stated for the record, and not for the first time, that states are extremely willing to try to find a way to mitigate the harms to parties and allow the appeals to proceed. I heard not a whisper, complete crickets from all the objecting parties with respect to engaging with us on that point. And we can't do it by ourselves.

THE COURT: I know you can't do it by yourself, but you can't do it without Maryland and the U.S. Trustee, too. And they're not willing to do that. So, I mean, it's good for your two clients, but it would be a waste of time if they are not prepared to do it. And I took away from their candid comments that they aren't.

MR. GOLD: Okay. We will review the issue with them, Your Honor.

THE COURT: Okay.

MR. GOLD: Thank you for that comment.

THE COURT: If they were, that would be great. But that's not the record before me.

MR. GOLD: Okay. Thank you, Your Honor. I have no further comments.

THE COURT: Okay. All right. I have before me three motions for a stay pending appeal, a first day motion by the United States Trustee for a stay pending appeal of two orders, the Court's order confirming the Twelfth Amended Chapter 11 Plan in these cases, and secondly, the Court's so-called Advance Order permitting the Debtors to take certain procedural steps and spend a relatively modest amount of money to be more ready to effectuate the transaction under the plan if and when the effective date occurs.

The other two motions are first by the states of Washington and Connecticut, and second by the State of Maryland, which seek a stay pending appeal over the confirmation order.

Three other appellants have joined in one or the other of those motions, and in respect of one of them have supplemented the joinder to some extent. So Mr. Bass has

joined in the other motions, although it is clear to me both from his filing and his remarks today that his focus really was not on a stay pending appeal of the confirmation order -- he hasn't joined in or appealed the advance order -- but rather to have the briefing schedule and hearing schedule with respect to his appeal delayed by the district court. And I have explained to him that that really is a decision for the district court to make.

I also have a motion and a joinder by certain Canadian Creditors, Municipality, and First Nations Claimants that has joined in the other motions, although I don't believe that they have appealed the advance order. And that they primarily focus, if not exclusively focus on the issues raised by the states. And I have Ms. Isaacs' motion, which literally adopts the State of Washington and the State of California -- I'm sorry, the State of Connecticut's motion.

When I address the State of Washington and the State of Connecticut's motion, I will also be addressing, therefore, Ms. Isaacs' motion. And similarly, when I address the first three motions that I mentioned, I will be addressing the Canadian claimants' motion except when I briefly address their unique issues on the prong in the standard for evaluating motions for a stay pending appeal, focusing on the need for a strong showing that the movant is

likely to succeed on the merits of the appeal.

The movants have the burden of proof with respect to their motions for the stay pending appeal, and that has been characterized as a heavy one. And the grant of a stay pending appeal has been characterized as extraordinary relief. See In re General Motors Corp., 409 B.R. 24 (Bankr. S.D.N.Y. 2009 with regard to the first point, and In re Sabine Oil & Gas Corporation, 551 B.R. 132, 142 (Bankr. S.D.N.Y 2016) on the second point.

The grant of a stay pending appeal is an exercise of judicial discretion dependent on the circumstances of a particular case, id Sabine Oil, 548 B.R. 681 and In re General Motors, 409 B.R. 30. They are, again, treated as an exception, not the rule, and are granted only in limited circumstances, In re Brown, 2020 WL 3264057, at *5 (Bankr. S.D.N.Y. June 10, 2020).

To satisfy its burden to obtain a stay pending appeal, the movant needs to establish a proper balance in its favor of the following four factors; whether the movant has made a strong showing that it is likely to succeed on the merits, whether the movant will be irreparably injured absent a stay, whether a stay will substantially injure the other parties interested in the proceeding, sometimes referred to as the assessment of the balance of harms, and four, where the public interest lies. See Nken v. Holder,

556 U.S. 418, 434 (2009) and Kelly v. Honeywell Int'l, Inc., 933 F.3d 173, 188-184 (2d Cir. 2019).

The Honeywell case is an important gloss on the first factor requiring a strong showing that the movant is likely to succeed on the merits of the underlying appeal by its focus on the need for that showing to show a fair ground for litigation. A number of courts have phrased this as a showing regarding the success on appeal somewhere between possible and probable. Again, see Brown, 2020 WL 3264057 *7 and Sabine Oil, 548 B.R. 683, 684, which also notes in Judge Chapman's opinion that the probability of success that must be demonstrated can be viewed as inversely proportional to the amount of irreparable injury that the movant will suffer absent of the stay. In other words, more of one excuse is less of the other, id at 684.

I will briefly address the first prong, which, along with the prong of a showing of irreparable harm, are the two factors that are viewed as most critical in the analysis, Nken v. Holder, 556 U.S. 434. See also Uniformed Fire Officers Association v. De Blasio, 973 F.3d 41-48 (2d Cir. 2020).

This analysis of the merits by the court that issued the order upon which the appeal is based is one that places that court in the position of looking at its ruling objectively as one would from the outside to see whether

there are fair grounds for litigation of the appeal. And depending on the strength, or lack thereof, of a showing of irreparable harm, perhaps more than that to warrant a stay.

Obviously the Court's determination of the issues before it that are the subject of the movants' appeals was carefully undertaken by me after a lengthy trial and set forth in a 155-page written memorandum of decision. The issues on appeal I believe do not all warrant a finding of a strong showing likely to succeed on the merits or of likely success on the merits somewhere between possible and probable. Again, recognizing the sliding scale for this -- for purposes of this stay pending appeal determination.

Certain of the issues raised I believe are clear under applicable Second Circuit law and a real stretch by the appellants. Those include the so-called due process argument, the so-called 524(e) argument, the analysis of the merits of the settlement, and the argument that the Second Circuit should change its law from how it is currently articulated.

As far as the due process argument is concerned, the United States Trustee has argued that the plan, with its injunction of certain third-party direct claims against the released parties, violates the due process clause by taking those claims without the right to a hearing and a trial, citing and relying on large measure upon Ortiz v. Fibreboard

Corp., 527 U.S. 815 (1999).

As far as the notice point is concerned, I made extensive factual findings as to the notice that was provided and was received by those who are creditors of the Debtors. I will note my view that the plan itself and the underlying claims that have been identified by the U.S. Trustee apply to release or enjoin direct third-party claims that overlap with in a highly meaningful way claims of the Debtors or against the Debtors. And therefore, such notice would be sufficient. I will note further that there is no absolute right to a trial beyond the trial that the court held as to the bona fides of the settlement with its right to object, which was preceded by a right to vote on the plan and to object to the plan generally, including the classification scheme set forth in the plan.

That scheme and the right to vote and the review by the bankruptcy court clearly distinguishes the bankruptcy process as recognized by the Second Circuit that would encompass certain types of releases of third-party claims from the fact pattern and concerns raised by the Supreme Court in Ortiz, where there was a concern that those that would be bound by a non-opt-out settlement were not adequately represented because of conflicts of interest, where there was no vote, and no plan process including the right to object to classification and voting, and ultimately

the court's review of the proposed settlement in that context.

The Supreme Court largely recognized this fact in Ortiz itself, recognizing that its general view as to due process was qualified by a special remedial scheme, quoting Martin v. Wilks, 490 U.S. 755, 762, Note 2 (1989), which specifically referenced the bankruptcy legislative scheme.

I believe the bench ruling sufficiently dealt with the inapplicability of the 524(e) argument, including citing well-reasoned opinions by other circuit courts on it.

As a factual matter, I will note that the U.S. Trustee took no discovery in connection with the confirmation hearing or generally in the case as a whole and largely played the role of a kibitzer on the evidence during the trial, offering no witnesses of its own. And to the extent it does, or the U.S. Trustee does object to the analysis of the merits of the settlement, I find it highly unlikely that that analysis would prevail on appeal.

As far as the moving states' arguments on the merits that overlap with the ones that I just raised, I won't address them again. But I will note that I believe I comprehensively dealt with their classification arguments and their voting arguments and that the evidence in my analysis of recoveries under 1129(a)(7) clearly establishes that the plan would satisfy the best interest test even if

one considered the rights that they were being required to give up to pursue third-party claims against the released parties, although that was an alternative holding.

The U.S. Trustee's and the states' other arguments, however, I believe if there was a strong showing of irreparable harm, would satisfy the first prong of their burden of proof. The U.S. Trustee is clearly wrong that personal injury claimants and other creditors are receiving nothing on account of their third-party claims against the released parties. It is clear that it is the settlement of those third-party claims that enables the entire plan and the distributions under the plan, without which they would receive in my view as I found based on the analysis of the evidence, including the rights of the United States in the DOJ settlement to a super-priority claim and the limited recoveries that they would have in the free-for-all litigation that would ensue, literally no recovery.

The plan treats personal injury claims as receiving a distribution based on the liquidation of the underlying claim against the Debtor. That does not mean that the personal injury claimants are not receiving value on account of their third-party claims, but it reflects I believe that their third-party claims are overlapping, and though entitling them perhaps to a direct recover as opposed to a recovery through the Debtor, viewed as derivative

claims under the analysis by the circuit in the Tronox case as well as by other courts that have distinguished claims that may be direct but are asserted because of harm to all of a debtor's creditors as opposed to individual creditors as discussed in the Tronox case, which is referenced and discussed at some length in my opinion. See also the discussion in Deutsche Oel & Gas S.A. v. Energy Capital Partners Mezzanine Opportunities Fund A, LP, U.S. Dist. LEXIS 181000 (S.D.N.Y. September 20, 2020), and In re CIL Limited, 2018 Bankr. LEXIS 354 (Bankr. S.D.N.Y. February 9, 2018).

As I also noted in the memorandum in support of the order, the circuit has now made it clear, notwithstanding the citation by the U.S. Trustee of Johns Manville Corp. v. Chubb Indemnity Insurance Company, 606 F.2d 135, 153-154 (2d. Cir. 2010), that the evaluation is only in respect of in rem claims. As stated and discussed at length in the Quigley case, the Court's power extends to in personam claims as long as the factors laid out by the Circuit are satisfied after a searching inquiry by the Court.

However, those factors have been the subject of different analyses over the years as to what is properly subject to an injunction of a direct third-party claim. And I believe that it is that issue, i.e. how those claims are

cabined between the clear instance where they should not be enjoined as discussed in the Manville III opinion, and where they should be.

I have tried to narrow those so that it does reflect in the plan that such claims are only those where there is a substantial or an entire overlap. And I believe that the factual record of the claims that the U.S. Trustee purports to be protecting reflects just that overlap, i.e. a lack of direct fraud as opposed to allegations of extensive control over an enterprise that itself engaged in fraud or other violations of consumer law which would apply to all creditors, to protect all creditors of the debtors.

While I believe there is less of a fair ground for litigation on the second point which is raised only by the moving states, namely that notwithstanding there being any specific protection for them in the Bankruptcy Code, their status as a governmental entity takes them out of the reach of this particular plan injunction. Notwithstanding that, the injunction at this point given the creditors' other agreements applies just to the creditors' right to pursue monetary claims against the third parties.

The state creditors have argued that the deterrent effect of pursuing those claims is a valid governmental interest, which to some extent it is. But I believe that it is going far too far to state that that interest requires

them to decide whether there would be a trial or not of such claims where they overlap with the claims against the Debtor's estate and by the Debtor's estate, as I believe they are cabined under the plan.

I will note that the moving states have at times argued that that public interest extends to their right to take discovery and engage in a trial, but I will also note that they have touted in this motion the benefits of the so-called national settlement in the multi-district litigation in which two of the three of them are parties where there has been no trial by them, and I believe far less discovery that occurred in this case, that they would have and did have direct access to. But with that also I believe that that package of issues is an issue for consideration appropriately under the first prong of the test for obtaining a stay pending appeal.

The other most critical factor is whether the movant will be irreparably injured absent the stay. For all intents and purpose, although the movants have each attempted to argue other injuries, the injury that they posit as an irreparable injury is the risk that during the course of their appeals, the plan would be so far consummated that the appeals would become equitably moot.

The equitable mootness doctrine is at one level fairly well established in the Second Circuit, although

throughout the country there is a wide variation on how courts look at it. I say at one level because the courts have also made it clear that, "The doctrine is deployed in a pragmatic and flexible fashion and must be responsive to the specific factors presented in a particular case ultimately to focus on as a prudential matter whether a court should dismiss a bankruptcy appeal when even though effective relief could conceivably be fashioned, implementation of that relief would be inequitable." See Beeman v. BGI Creditors' Liquidating Trust (In re BGI, Inc.), 772 F.3d 102, 107-08 (2d Cir. 2014) and GLM DWF Inc. v. Windstream Holdings Inc. (In re Windstream Holdings Inc.), 838 Fed. Appx. 634 (2d Cir. Feb. 18, 2021. Where a plan has been substantially consummated, the circuit presumes that an appeal is equitably moot. And in that circumstance, a party seeking to overcome that presumption may do so only by demonstrating that five factors are met. But that of course is only where, again, a plan has been substantially consummated under the Bankruptcy Code, id In re Windstream Holdings Ind., 838 Fed. Appx. 634, 636.

The course by a vast majority have held that the possibility of equitable mootness standing alone does not constitute irreparable harm. Rather, it is a form of prejudice which with some other consideration can constitute equitable harm. Again, taking into account the equitable

nature of the request for relief, i.e. the stay pending appeal, it would seem to me that that other factor can be any one of the three other factors, i.e. the very importance and seriousness of the appeal on the merits and the harm or lack of harm to other parties and/or the public interest, which includes both a sense of the importance of the finality of bankruptcy plans where they are complicated and involve delicately-negotiated and extensively-reviewed compromises as against the public interest in literally getting an appeal right beyond the trial court determination. See for example the discussion of this topic in In Re Adelphia Communications Corp., 361 B.R. 337, 347-348 (S.D.N.Y. 2007) and In re St. Johnsbury Trucking Company, 185 B.R. 687 (S.D.N.Y. 1995), both of which cases considered some balancing of the other factors in addition to the risk of equitable mootness.

And on the other side of the equation, the discussion in In re Windstream Holdings Ind., 2020 U.S. Dist. LEXIS 167183 (S.D.N.Y. August 3, 2020) where the district court makes the clearly correct point that merely invoking equitable mootness as the appellants have done here, a risk that is present in any post-confirmation appeal of a Chapter 11 plan, is not sufficient on its own to demonstrate irreparable harm. That's id at Page 7 quoting In re Calpine Corp., 2008 Bankr. LEXIS 217 (Bankr. S.D.N.Y.

January 24, 2018). See also In re W.R. Grace & Company, 475 B.R. 34 -- I'm sorry, I have the wrong cite. It's at Pages 207 through 08 (D. Del. 2012), affirmed 729 F.3d 332 (3rd Cir. 2013).

In the cases where courts have taken seriously the risk of equitable mootness, they have either, as in the Adelphia case, had grave doubts about the merits of the appeal and believe that they needed to be addressed, or the harm to the other parties was offset by the need for an appeal where there was other irreparable harm besides mootness that would occur if the appeal were not heard.

As for the mootness issue as irreparable harm and irreparable harm in general, the allegation of irreparable harm and the showing of it must be neither remote nor speculative, but actual and imminent. The possibility of irreparable harm is too lenient. Nken v. Holder, 556 U.S. 434-435 and In re Sabine Oil & Gas Corp., 551 B.R. 143.

Here, the appellants are in two different camps as far as the relief that they are seeking from me. The U.S. Trustee has clearly asked for a stay pending appeal throughout all of the appeals, i.e. through potentially determination of its appeal by the Supreme Court. It has a fallback position in which it asks for a stay through the district court determination on the appeal plus some additional time.

The moving states I think are much more focused on a short-term stay. And based on their remarks during oral argument, I believe they would confine their motion to such a request.

As I stated during oral argument, and I won't repeat the cases that I cited, it seems to me that Bankruptcy Rule 8025 effectively limits the bankruptcy court's ability to issue a stay pending appeal of a district court's order. The provisions of Rule 8007 and Rule 8025 do not entirely mesh, as noted by the district court in Credit One Bank N.A. v. Anderson (In re Anderson), 560 B.R. 84, 88 (S.D.N.Y. 2016). But as I've previously cited, there are plenty of cases where bankruptcy courts have limited their stays because of Rule 8025 up to the date of the district court's ruling.

I believe that is appropriate here not only because of Rule 8025, but also because of the distinctly different factual considerations underlying a request for a stay pending appeal in these appeals and in these cases for a stay pending appeal through the district court's ruling and a stay thereafter.

The district court has made it clear that it is on a fast track to determining the appeal, which it will hear oral argument on at the end of November and may well rule on by the end of the first week of December. Moreover, the

appellees have stipulated and will be prepared to add to that stipulation based on the record at oral argument that they will not cause the effective date to occur, that is the effective date of the plan, until the earlier of the district court's ruling, which under Rule 8025 and results in, unless the district court orders otherwise, a 14-day stay and December 31.

They have also stipulated that they will not argue equitable mootness to a subsequent appellate court, whether that's the Second Circuit or the Supreme Court based on actions taken prior to the effective date of the plan, including in respect of the advance order.

Based on my review of the plan in addition to that stipulation, it is highly unlikely that the plan would permit any actions to be taken prior to the effective date that would come anywhere close to the types of transactions that give rise to equitable mootness under the law of the Second Circuit. That includes coming anywhere close to achieving substantial consummation of the plan under the Bankruptcy Code.

The appellees have further stipulated that they will give the appellants, including the movants, 14 days' notice of their actual efforts to cause the effective date to occur, of the actual effective date that is, or the projected effective date.

Finally, they have stated -- and again, this would be a condition for my order -- that they would render the movant's equitable mootness arguments moot by agreeing that the hearing on the sentencing of the debtors under the DOJ settlement agreement, that that hearing would be no earlier than December 31, which it is clear is the actual date that will be one where there is ample notice, clearly more than 14 days' notice, to the appellants, including the moving parties here.

Given all of the foregoing and the burden of proof as to irreparable harm that the movants have, I conclude that they have not established irreparable harm with respect to a stay which I believe is the only appropriate stay that I could grant, which is to the date of the district court ruling and a reasonable outside date wherein there would be sufficient notice for the movants to renew a stay motion in the district court.

The Debtors have suggested December 31 for that outside date, and it has been suggested to me by the movants that that date, being New Year's Eve and during the holiday season, may place an undue burden on the district court in scheduling a stay hearing, and to a lesser extent a burden on the parties. However, again, it appears more likely to me, although of course this is entirely up to the district court, that the district court will rule before December 31.

And I believe that the scheduling issue can be dealt with by saying the earlier of the district court's ruling and December 31 or such later date. I'm sorry, subject to the district court's calendar. So if the district court is not available at or around December 31 to hear a potential renewed stay motion depending on the district court's ruling and when that occurs, then it would be the later date for the district court to hold the hearing.

Clearly, the parties here have already prepared their stay motions. Indeed, the U.S. Trustee prepared four of them, which are all in my pleading binder. And we have had an extensive record for this hearing. I believe under those circumstances it's not a burden for them if the district court can schedule a stay hearing if they decide to make a stay motion after the district court's ruling by the outside date of December 31 if the district court had not ruled by then.

Otherwise, the appellate process would be governed by Rule 8025. And accordingly, I believe that a key element on the conditions that I just stated for the movants prevailing on the request for a stay pending appeal has not been met.

I will also address, however, the last two prongs that the movants would have to show, namely that there is no substantial injury to other parties interested in the

proceeding and where the public's interest lies.

As far as there being no substantial harm to other parties interested, the record here is clear and I believe, frankly, uncontroverted that there is to the contrary substantial harm to the Debtor's creditors, the vast majority of whom have either not objected to the plan and/or voted in favor of the plan affirmatively in each instance, the vast majority that is.

After the Debtors are ready to have the effective date of the plan occur, and it appears to me that that would not be realistically before December 31, although perhaps a week before they could be ready, after that date when they are ready, every day that they do not implement the effective date which starts the process of liquidating personal injury claims and making distributions on them and making the initial distributions for abatement purposes seriously causes harm to the creditors. It is clear to me that the personal injury creditors bargained for a rapid payout, which is reflected not only in their bargaining for a fixed, upfront sum of several hundred million dollars, but also the procedures they've adopted for consistent with due process and the burden of proof a streamlined option to liquidate one's proof of claim.

Similarly, the roughly up to a billion dollars minus the funds going to the personal injury creditors would

be going out shortly after the effective date through 2023 for abatement purposes, as well as the $225 million payment to the United States, which although not specifically earmarked for abatement purposes, United States has represented the vast majority of which will go to hospitals and other care facilities. This is amply testified to by Mr. Guard as far as the payments are concerned at Paragraphs 9 through 13 of his declaration as well as at Paragraphs 7 through 9 and 12 through 21 and in the summary at Paragraph 25 of Mr. DelConte's declaration. That declaration also address in Paragraph 22 and 23 the funding of Newco and setting it up as a public benefit company to focus on developing products at a reasonable price to combat the opioid crisis.

As Mr. Guard eloquently summarized, many states have been litigating these issues since, well -- I'll quote him, because it's actually quite telling -- for as long as five years before the commencement of the bankruptcy case in addition to the two years of this bankruptcy case. I believe that that length of time was necessary to satisfy the due process Iridium and Metromedia factors as well as to negotiate the intricate intercreditor deals in the plan. The additional time of a stay pending appeal after the district court's ruling is necessary only to have further appeals. There is nothing else that would hold up the

payment of the money.

As Ms. Juaire and Ms. Trainor eloquently have testified, that payment is, if made, to be put to use both for the immediate needs of the individual victims and for abatement purposes at a time when every dollar counts. And as time passes, the problem only gets worse.

As testified to by Mr. Guard and Mr. Jorgenson, opioid deaths have been increasing over the last two years at a very disturbing level, roughly 30 percent nationally, such that in the last year of March to March, roughly 200 opioid-related overdose deaths occur each day.

I agree with the states of Washington and Connecticut that if the parties could all agree that those initial distributions could be made and the parties who are appealing would take the risk on equitable mootness with regard to those distributions, that would be all to the good. But the U.S. Trustee and the State of Maryland do not seem to be prepared to agree to such a resolution to get money out promptly.

So on the one hand, we have that clear, tangible harm. On the other hand, post the date when the Debtors would be ready to go effective, which, again, would be at the end of this year, we have tangible harm as described in the Juaire, Trainor, Guard and Jorgenson declarations, contrasted with the legitimate but non-economic harm of

having extra layers of appeal.

The public interest factor in some respects dovetails with the foregoing analysis. The U.S. Trustee states that it is protecting the interests of those who did not object to the plan but did not affirmatively accept it and those who did object to the plan. It has not, however, provided any information to me that would indicate that those parties would effectively be able to pursue their claims against the released parties to recover anything and would not -- and in addition would not recover any amounts from the Debtors.

The vindication of that public policy, i.e. protecting the minority, at some point -- and I believe that point comes soon after the Debtors are ready for the effective date, although maybe with enough time to have an expedited appeal to the circuit depending on the seriousness of the issues on appeal -- is sufficient to carry the day on the public policy point. But those issues can be addressed by the district court if there is a motion for a stay after its ruling.

In light of its assessment of all four factors, including the first factor, the likelihood of success on appeal, and with the benefit of this record which, again, is extensive with extensive evidence offered by the party that doesn't have the burden of proof on this issue, the

objectants, with no evidence offered for what I'll refer to as the longer stay issue of the balance of harms by the movants.

The other public interest factor I have been told is the deterrence factor. I will note, however, that at some point the public's desire to get paid may well outpace that deterrence factor, particularly where, again, the issue is one simply of a fight over money and the movants can simply not close their eyes to the fact that their litigation alternatives are ones where they already with regard to other defendants that they have pursued have resulted in settlements rather than trials and where the effect of a lengthy stay would prevent the release of the document repository which can be used not only by the public and academics, but also to actually fight the remaining trials and litigation that's pending against other parties.

Counsel for the Ad Hoc Committee of Personal Injury Claimants has suggested that I require at this point the posting of a bond by the states and the non U.S. Trustee appellants. Of course the posting of a bond to protect the appellees from the adverse effects of a stay is the norm rather than the exception. And even where the Court has believed that there are not just possible but quite probable issues on the merits, it has required the posting of a bond, and a substantial bond pending appeal. See In re Adelphia

Communications Corp., 361 B.R. 337.

The U.S. Trustee I believe correctly points out that Rule 8007(d) exempts the federal government from a bond requirement. And while that language is not entirely clear, I believe that that is the case. However, that does not help the U.S. Trustee on the issue of the harm to other parties or the balancing of the harms since it offers nothing in return for the risk that it will have been wrong and have pursued a lengthy appeal process that results in the substantial delay of payments that literally save lives and families.

8007(d) says nothing about any other entity, including any other governmental entity being exempt from the bond requirements. And in fact, there is meaningful caselaw on that point or under the analogous Federal Rule of Civil Procedure 62. The fact that state courts don't impose a bond on other states I believe is irrelevant, as noted by more than one of the objectors. A federal statute including the Bankruptcy Code as interpreted by the bankruptcy courts will defeat a state's interest in enforcing its law and in protecting appellees if in fact it obtains a stay. The basic principle was set forth in Butner v. United States, 440 U.S. 45, 48 (1979). And, in fact, in other cases bonds have been imposed on states. I cited one of those during oral argument, Lightfoot v. Walker 797 F.2d 505 (7th Cir.

1986), a decision by Judge Posner. See also Cayuga Indian Nation of New York v. Pataki, 188 F. Supp. 2d 223 (S.D.N.Y 2002) and PAO Tatneft v. Ukraine, 2021 U.S. Dist. LEXIS 102179, 6-7 (D.D.C. June 1, 2021). That latter decision also is authority for requiring the Canadian entities to post a bond.

Again, I do not believe a bond is required with respect to the order that I will grant, which denies the stay request. But I am denying the U.S. Trustee's request for a broader stay, i.e. one that would last through the entire appellate process because it is not posting a bond. And I would deny a similar request by the movant states because they have not offered to post a bond where it is clear that there would be substantial harm to third parties occasioned by delay after the date when the Debtors have acknowledged they will, and only by that date, be ready to go effective with their plan.

Counsel for the Ad Hoc Committee of Personal Injury Claimants has also suggested that I oppose additional reciprocal conditions on my not granting the motion, reciprocal to the conditions that I am imposing on the debtors and the other plan proponents. They would basically go to any efforts by the movants to delay emergence other than of course through the appellate process. That would include continuing their commitment to an expedited

appellate process, not seeking to adjourn the sentencing hearing before the district court in New Jersey and the like.

I am not prepared to impose those conditions. However, I will reserve the appellee's right to revisit those conditions if such delaying tactics are undertaken. I don't believe they will be because I believe they are antithetical to the stated goals of the movants to expedite the appeal process and get money out to claimants. But if that proves not to be the case, then I will lift the conditions that I am imposing as a quid pro quo to my not granting the stay motions.

I noted that the Canadian claimants' motion essentially rides along on the mootness point with the other three motions that I have described. On the merits point, it addresses arguments unique to the Canadian claimants based on their assertions that they are sovereign entities and therefore that their rights cannot be constrained. I have clearly disagreed with that in my confirmation ruling.

I will also note that the objections to the Canadian claimants' points on this argument are well taken. Canadian claimants, not all of them, but Canadian claimants in their group have filed proofs of claim in these cases on behalf of all of the claimants, which would subject them to the court's jurisdiction. Moreover, the claimants' rights

are not specifically protected under the Bankruptcy Code. They fall into the waiver of sovereign immunity for governmental entities.

And again, I believe that the comprehensive bankruptcy scheme recognized by not only Ortiz but also Butner and the circuit in Manville IV, 606 F.3d 135, all contemplate that those types of rights can be constrained by the Court even where they pertain to or limit the ability to pursue claims that are direct claims, at least where those direct claims overlap with claims assertable by all creditors and based on actions that are primarily actions through the Debtors.

So I will look for an order consistent with my ruling. I will not require a notice of when the Debtors are asking for a hearing date, but only a notice of the hearing date (indiscernible) the hearing date. I will not extend the outer date for their condition beyond December 31, but that will be subject to the district court's schedule, obviously tying into the commitment that has already been given by the appellees of a 14-day notice of the actual effective date, which is all tied to giving the movants time to renew their motion for appeal -- I'm sorry, for a stay pending appeal, excuse me.

All right, are there any questions on what the order should say?

MR. FOGELMAN: Your Honor, this is Larry Fogelman on behalf of the United States. May I make one comment?

THE COURT: Okay.

MR. FOGELMAN: It's really -- it's just a clarification of one of the comments that Your Honor made. While it's true that almost all of our civil recoveries for the federal healthcare agencies that do help treat opioid use disorder, I just -- and that includes the $225 million from the Sackler settlement which will be a civil claim. And that was addressed in the letter that we filed with the Court. I just want to clarify that the $225 million asset forfeiture recovery under the plea agreement, that's required by statute to go to the asset forfeiture fund (indiscernible). I think Your Honor had said that the asset forfeiture amount goes to the federal healthcare agencies. So I just wanted to make that clarification for the Court.

THE COURT: Okay. Thank you.

MR. FOGELMAN: Thank you.

THE COURT: All right. So are there any questions on the order? No?

MR. KAMINETZKY: We will do our best, Your Honor. I think we understand.

THE COURT: I don't want the parties to spend an enormous amount of time negotiating this order. If there is a disagreement about what the parties think I said, you

should promptly send me the alternative proposed orders with the second one blacklined to show the changes and I'll enter the one that I believe is consistent with my ruling.

MR. KAMINETZKY: We will do so, Your Honor.

THE COURT: Okay, very well. Thank you.

(Whereupon these proceedings were concluded at 6:32 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya M. Ledanski Hyde

Sonya Ledanski Hyde

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Date: November 12, 2021

j

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